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SCHECHTER'S "JEWISH SECTARIES"

Documents of Jewish Sectaries. Volume I. Fragments of a Zadokite work. Edited from Hebrew manuscripts in the Cairo Genizah Collection, Cambridge, and provided with an English translation, introduction and notes. By S. SCHECHTER, M.A., Litt.D. (Cantab.), President of the Jewish Theological Seminary in New York. Cambridge: UNIVERSITY PRESS, 1910. pp. lxiv + 20.

Numerous gaps of early Jewish history for which we had no sources and hardly expected ever to unearth any, have since 1898 been partly filled by Professor Schechter's striking finds in the Cairo Genizah saved and secured by him for the Cambridge University Library. In 1910 he startled the literary world by his publication of a large and a small fragment of a book written by a Zadokite of the first century. The mere fact that nothing whatever was known of Sadducee literature, gave the publication the character of a unique discovery promising to elucidate a still obscure period of Jewish history in which Jewish historians and New Testament scholars are equally interested. Professor Schechter has made the sometimes very difficult fragments accessible to all readers by a full translation accompanied by learned notes full of his wide knowledge of rabbinic literature and by many valuable emendations. An introduction of twenty-nine quarto pages deals with the two manuscripts of the eleventh and twelfth century respectively, one of 16 and the other of 2 pages, the latter partly parallel, partly additional; it further discusses the script of the documents, their contents and their style, their sectarian, Zadokite character, and the apocalyptic sources of the book; it analyses the history of the sect that was founded by emigrants from Jerusalem in the second century B. C. in Damascus and the constitution of the sect and its peculiar laws. They lead Professor

Schechter to a thorough examination of the sects which separated from Judaism and of the apocalyptic literature concerned, and bring him to the conclusion that the book was written by a Dosithean. In spite of the full commentary and introduction there are, however, as Professor Schechter admits, still many riddles in the fragments to be solved, and he invites students to devote themselves to the difficult details of the unique book.

In availing myself of this invitation, I venture to offer in this rather extensive review my own difficulties in Professor Schechter's view of the Zadokite or Dosithean origin and the early date of the book. By a detailed examination especially of the halakic parts of the fragment which have so far not been studied with the same zeal as the narrative, I shall endeavor to show that neither Kirkisani's references to some details of Šadduḳ's lost book, nor the similar laws and customs in the Dosithean sect which constitute the foundation of Professor Schechter's theory, are sufficiently strong to bear the weight of the inferences put upon them. From some of the characteristic Halakahs of the fragment and the peculiarities of the style I shall try, though with great caution, to prove that our book probably originated in the times of the book of Šadduḳ and Anan, in the eighth century. In continually relying on Professor Schechter's interpretation and his parallels to which some Talmudic illustrations will be added, I shall attempt to show that also the narrative is merely the picture of a sect which lived in the district of Damascus in the seventh or eighth century, a picture artificially drawn to reflect assumed conditions shortly before the destruction of the second Temple. As to the sources of the fragment, while in agreement with Professor Schechter that our author used the Book of Jubilees and the Testaments of the Twelve Patriarchs, I shall adduce evidence that he used them in the form in which they were known in the times of the Babylonian Gaons in the ninth and tenth centuries. In venturing to criticise Professor Schechter's views of the fragment, I follow the principle *תורה היא וללמוד אני צריך*, and I confidently hope that the discoverer and first interpreter of the unique book will read my remarks and suggestions with the same mind and in the same sense, as I am offering them.

Professor Schechter's cardinal proof for the Zadokite origin of the fragment is Kirkisani's reference to a book of Zadok which reads: "Zadok was the first who exposed the Rabbanites and contradicted them publicly. He revealed a part of the truth and composed books in which he frequently denounced the Rabbanites and criticised them. But he adduced no proof for anything he said, merely saying it by way of statement, except in one thing, namely, in his prohibition against marrying the daughter of the brother and the daughter of the sister. For he adduced as proof their being analogous to the paternal and maternal aunt."¹ Now, argues Schechter,² this description of the Zadok book well fits our Text which, in its Haggadah, is largely polemical, whilst its Halakah affords little else than mere statements; a real argument and refutation of the opposite opinion we have only, as stated by Kirkisani, in the case of prohibiting the marriage with one's niece.

ZADOK'S BOOK

Does our fragment fit this description of Zadok's book? The latter was a denunciation of rabbinic laws and rules and a dry statement of the correct laws without arguments. Our fragment, it is true, contains strong abuse against nameless opponents, but objects only to three, expressly enumerated sins. No method of interpretation, no way in deducing new rules, no extension of the law is referred to at all, and our book does in no way look or pretend to be a *general* attack of a Zadokite on the basis and the development of rabbinic law. In addition to abuse and an emphasis of the three sins, it contains the history and the detailed constitution of a sect in Damascus which is the main, probably the only object of the fragment preserved. A general attack on Rabbinism and the statement of Sadducee law could not possibly have given an occasion for the representation of a sect in Damascus. Again, the laws in the fragment, covering pp. 9-16, are, it is true, merely enumerated and give, beside frequent references to the Torah, no arguments. But just as the prohibition against the marriage with the niece, being the third of the three laws discussed by our author, is derived from the Bible (p. 5, 7-11), so is immediately before it

¹ *Kitāb al Anwār*, ed. Harkavy, p. 283.

² p. XVIII.

the second of the three laws, the prohibition against marriage with another woman, whilst the first is alive, deduced from several passages of the Bible (p. 4, 20-5, 6). Though no *שקילה*, nor any of the rules of interpretation is here applied, the presence of arguments cannot be denied; and if this were Zadok's book, Kirkisani could not have said that it gave an argument only in one case.³ It is to my mind evident that our fragment is not identical with Zadok's book quoted by Kirkisani.

This is further proved by another reference to Zadok's book in an Arabic commentary on Exodus either by Sahl b. Maṣliḥ (950-960) or by another Karaite writer of the tenth century: "Our ancestors used to look for the new moon (in order to fix the festivals); concerning this Saadia maintains that it was done owing to (the opposition of) Ṣadduḳ and Boethus. However, the books of the Sadducees are generally known, and nothing of what Saadia says is to be found in them. For the books of Ṣadduḳ deal, it is true, with the discussions with the Rabbanites in the times of the second Temple about sacrifices and other matters; but not one single line is to be found concerning the point mentioned by Saadia." On testing our book by the details of his statement, we find that it states no differences whatever between any two sects or sections of the Jews; and as far as the eight pages containing laws justify the inference, also the lost parts of the fragments contained no such differences. Among these there were prominent in Ṣadduḳ's book several about sacrifices; our fragment gives no reference to such. Considering that it deals exclusively with the colony in Damascus, no space was devoted in it to differences between Sadducees and Pharisees on sacrifices. The Temple is mentioned twice; but the passage deals with its defilement by a wrong observance of the laws of levitical purity and cannot be interpreted to refer to sacrifices. Consequently the book of Ṣadduḳ quoted by Sahl b. Maṣliḥ was wholly different from our fragment.

³ Schechter's remark p. XIX, note 22 that, as in this point the Karaites differed as much from the sect of Damascus as the Rabbanites, Kirkisani would not refer to it, because he only spoke of the criticism of the Rabbanites, is not convincing.

⁴ See Harkavy in Grätz, *Geschichte*, V, 4th ed., p. 475 ff.

THE ZADOKITE LAWS

But two single laws, reported by Kirkisani as peculiar to the Zadokites, were considered by Schechter as proof for the identity of our book with that of Sadduḳ. "The Zadokites absolutely forbade divorce which the Bible permitted." Now the 16 pages of our fragment contain, as far as I can see, not one single word about divorce, neither the biblical term שֵׁלַח, nor the rabbinic גֵּרֵשׁ, nor is any of the synonyms for divorce alluded to in the paragraph p. 4, 20-5, 5 adduced by Schechter as agreeing with the Zadokites. It reads: "They are ensnared by two: by fornication, taking two wives during their lifetimes, but the foundation of the creation is, 'male and female created He them.' And they who came into the ark, 'two and two went into the ark.' As to the prince, it is written, 'He shall not multiply wives unto himself.'" Schechter in his note to the passage remarks: "The argument is evidently not only directed against polygamy, but also against divorce which certain Jewish sects forbade." But I am unable to see where the author prohibited or even thought to limit divorce. He exclusively deals with polygamy and remarriage after divorce without suggesting anything against divorce itself. Moreover, he takes it for granted without the slightest objection that a man may divorce his wife. The three passages adduced by the author from the Bible deal with polygamy only, and the utmost that could be read into his proofs, would be the interpretation possibly given to Deuteron. 17, 17: he shall not marry another wife even after having divorced the first. As Schechter points out, the sect of the Dositheans, as reported by Epiphanius,⁵ observed exactly the same rule: "some of them abstain from a second marriage, but others never marry"; this means either after the first wife died or was divorced.⁷ In no case can it be proved that our fragment agreed with Kirkisani's Zadokites as to the absolute prohibition against divorce.

⁵ Kirkisani, p. 304. 311. Judah Hadassi, Alphabeta 97. 98.

⁶ *Haeres.* XIII.

⁷ Though Blau, *Die jüdische Ehescheidung*, p. 59-61 adopts Schechter's interpretation of the passage in our book, his proofs only demonstrate the prohibition against polygamy, not more.

Even the prohibition against polygamy has no parallel in earlier literature; and neither Kirkisani nor other Karaites quote either Ṣadduḳ, or any earlier authority for it. But few, as for instance, Sahl b. Maṣṣliāh, went as far as to forbid it;⁸ whence he derived it, is not known, as he mentions no source for it. Whether any authority before the destruction of the Temple had any knowledge of the prohibition, is at least doubtful. For Josephus⁹ says that it was an old custom to have several wives; and though he stated this in connection with marriages in Herod's family, it deserves special attention. Of the rabbis only very few thought it necessary to excuse polygamy; one in the manner of our fragment, proves from the creation of Adam and Eve that one wife is sufficient.¹⁰ As far as we know, the rabbis lived in monogamy;¹¹ but nothing indicates that they or any of their Jewish opponents prohibited

⁸ See Poznański in *REJ.*, XLV, p. 185, 6, who also refers to לקח טוב by Tobiah b. Eliezer on Lev. -8, 18, p. 51b: ושומר שתי נשים בעלמא אסורות: בידוע שאין להם לא דת ולא חוק ... אלא ודאי כשם שטענו בשתי נשים כך בשתי ... אחיות. Whom he meant is evident from his words to Deut. 21, 15, p. 35b: כמה טעיות טעו הקראים שאמרו ואשה אל אחותה לא תקח אלו שתי נשים ... where he expressly mentioned the Karaites.

⁹ *Antiq.* XVII, 1, 2, § 15; *Wars* I, 24, 2, § 477. Krauss, *Archaeologie*, II, 26 ff.

¹⁰ R. Judah b. Bethera in Abot R. Nathan, 2nd version, II, 5a: אף אני די' חלקי אשתי די חלקי (see Blau, *Jüd. Ehescheidung*, p. 56). In Midrash Samuel I, § 7 (See Bacher, *Palaest. Amoräer*, II, 246, 2) R. Isaac says: The statement that Elkanah had two wives, is not meant to be a blame; Hannah herself expressed the wish that her husband should take another wife, as she had no children. In Genes. rab., 23, 2, R. Judah b. R. Simon describes it as a custom of the sinful generation of the flood to have two wives, one for bearing children, the other for intercourse.

¹¹ Otherwise Justin Martyr in *Dialogus cum Tryphone*, ch. 134 would have blamed the rabbis not merely because they encouraged immorality by sanctioning polygamy among the Jews, and by permitting them to lust after fair women so that some of them had even now four or five wives. But he would have reproached them also for their taking several wives, if he had only known one instance. Krauss (in *JQR.*, V, 130), when dealing with this passage, adds: "This matrimonial liberty was indeed, as a matter of fact, a painful characteristic of Talmud times," but he gives no evidence to prove this general statement and has left it out in his *Archäologie*, II, 26 ff.

polygamy. But whether the nobles of Jerusalem most of whom were Sadducees refrained from having several wives, is not known.¹² It is, therefore, for the present not possible to illustrate the prohibition of our fragment by earlier parallels than by Karaitic references¹³ of the tenth century.

The other law which Kirkisani attributes to the Zadokites is this: "They also fixed all the months at thirty days each. Again, they excluded the day of the Sabbath from the sum of the days of the feast of Passover, so as to make them seven days besides the Sabbath; in the same way also with the feast of Tabernacles."¹⁴ That our fragment contains nothing about the last peculiarity, could be accounted for by the fact that it has nothing about the festivals. But Schechter suggested that our author had adopted the calendar of the Book of Jubilees which was probably a solar calendar, for p. 16, 2 we read מכל אלה הנה ופרוש קציהם לעורון ישראל מכל אלה הנה "as to the explanation of their ends for a remembrance to Israel of all these, behold, it is exactly explained in the Book of the Divisions of the Seasons according to their Jubilees and their weeks." The reference is not clear, as the preceding piece is missing; but since the last line of it says "a man should make up his mind to return to the Torah of Moses in which everything is clearly explained," and in the line following the passage quoted, it states that "on the day on which the man makes up his mind to return to the Torah of Moses, the angel Mastemah will depart from him, if he keeps his promise," it is difficult to see how a reference to the calendar should stand between those two sentences. But Schechter (p. XVI) finds a proof for the different calendar of our fragment in p. 3, 13-16: "Revealing unto them the hidden things in which all erred: His holy Sabbaths and His glorious festivals, the testimony of his righteousness, and the ways of His truth, and the desires

¹² An epitropos of Agrippa II in Galilee had two wives, Sukkah 27a, bottom.

¹³ The Samaritans in the sixteenth century wrote that they took only one wife; and in the beginning of the eighteenth century they wrote: לֹא one wife; and in the beginning of the eighteenth century they wrote: לֹא נָקַח אֵלָּא שְׁתֵּי נָשִׁים בְּחֵיָהֶם, where אֵלָּא should be canceled. See Frankel, *Einfl. der pal. Exegese*, p. 252.

¹⁴ Kirkisani, p. 304; Hadassi, *Alphabeta* 97. 98.

of His will, which a man shall do and live by them." Schechter sees in this passage a mere paraphrase of Jubil, 6, 34: "And all the children of Israel will forget and will not find the path of the years."¹⁵ In fact, however, the two passages differ materially. While Jubilees enumerate years, months, seasons, and conclude by repeating the order of years, fixing the attention on the calendar, our book mentions Sabbaths and festivals, nothing else. But the Sabbath does in no way depend on the arrangement of the calendar; consequently the point of view is different. The parallel, pointed out by Schechter himself, p. 6, 18, 19, clearly indicates it: the correct observance of the prohibitions as to the Sabbath and the festivals headed in 6, 18 וַאֲתָּ יוֹם הַשַּׁבָּת כַּפְרוּשָׁה וַאֲתָּ 10, 14, הַמּוֹעֵדוֹת וַאֲתָּ יוֹם הַתְּעֵנִית כַּמְצוּתָם. עַל הַשַּׁבָּת לִשְׁמֶרָה כַּמְשַׁפְטָה. Not one line in the book suggests an allusion to the importance of the calendar so frequently emphasized in the Book of Jubilees.

As to the Zadokite months of 30 days, it is strange that Josephus knew nothing or failed to mention this important difference between the Pharisees and Sadducees; but even more difficult is it that the Talmud, in discussing the different dates of the *omer* and *Shabuot*, says nothing of the far-reaching difference of a solar calendar of the Sadducees. Does the Book of Jubilees and of Enoch prove anything for Jerusalem? It is again noteworthy that only sources referring to the seventh and eighth centuries report of the Sadducee calendar. Poznański, the well known specialist on Karaite literature and on the calendar, says:¹⁶ "It is recorded by David b. Merwān al-Miḡmaṣ, a writer of the ninth century, that the Sadducees observed months of 30 days, i. e. solar months. This testimony, however, adds the disadvantage of obscurity to that of lateness; it finds no support in Talmudic sources." And elsewhere,¹⁷ he adds: "Earlier sources surely report nothing similar, so that it is extremely probable that peculiarities of later sects were attributed to the Sadducees (just as the reverse could have happened); but it shows that such sects existed. Jehuda haParsi, a heretic otherwise unknown, maintains that the Israelites

¹⁵ Is path = אֶרֶץ a mistake for אֶרֶךְ = length?

¹⁶ Hastings, *Encyclopedia of Religion*, III, 117b.

¹⁷ *REJ.*, L, 19 ff.; cf. *JQR.*, X, 265; *REJ.*, XLIV, 177 ff.

always counted by solar years."¹⁸ It is, in any case, very characteristic that one author attributes the same calendar to the whole nation, and another merely to the Sadducees;¹⁹ one generalizing the observance of his own small sect and projecting it into the past, the other correctly limiting it to the Zadokites without indicating the time of their existence.

THE MARRIAGE WITH A NIECE

So far there is only one peculiarity of the Zadokite fragment that constitutes a clear parallel to the book of Šadduḳ, the prohibition against the marriage with a niece based on היקש, analogy. Poznański, in his usual, thorough way, has incidentally discussed the same prohibition among the early Karaites²⁰ and has collected the material referring to this interesting question. First we learn that Anan, the founder of Karaism, taught the same in his *Fadhālika*, and his words preserved by Jeshua b. Judah in his ספר ואסיר ליה לזכר למינסב אחות אביו דמן אביו run as follows: בין מכשירה בין מפסולה. ואסיר לה לזכר למינסב אחות אביו דמן אביו בין מכשירה בין מפסולה. ואסיר לה לזכר למינסב אחות אביו דמן אביו בין מכשירה בין מפסולה. Anan's source for this, as Kirkisani reports, was the analogy between man and woman; exactly the same as in the Zadokite fragment.²¹ As also the Samaritans observe this prohibition²² and similarly the sectarian Abu Imrān al-Tiflisi adopted it, Poznański

¹⁸ See Ibn Ezra on Gen. 8, 3, Exod. 12, 1, Lev. 25, 9.

¹⁹ I may add here that immediately before the passage quoted David Almiḳmaš in Judah Hadassi, *Alphab.* 97, 98, reports that the Sadducees took the words of the Bible literally, and also the anthropomorphic expressions about God. Some of them took these expressions to refer to angels or an angel who created the world at the command of God. How do these details fit into the picture drawn by Josephus?

²⁰ In Kaufmann's *Gedenkbuch*, p. 173 ff., *REJ.*, XLV, 184 ff.; Harkavy, *Anan*, p. 93.

²¹ Jefeth b. Ali also quotes Anan's rule (*REJ.*, XLV, 186), but he adds that Anan interpreted לא תקח לא אחותה in Lev. 18, 18 to refer to the niece and not to the sister.

²² We have no evidence that the Samaritans knew it already in pre-Karaitic times.

infers that it must be of great antiquity, as Kirkisani actually reports that the Zadokites prohibited to marry a niece, on the analogy between man and woman. But who are Kirkisani's Zadokites, and what has Jewish literature to say to this evidence? Poznański refers to the הלכות נדרות²³ which refute the prohibition of the Karaites; but this reference of the ninth century naturally proves nothing as to whether the rabbis of the first century knew the prohibition. He further refers to the Baraita in Yebam. 62, bottom,²⁴ in which an anonymous teacher recommends it as a good deed to marry the daughter of one's own sister;²⁵ and Poznański sees in this an opposition against the Sadducee prohibition. But apart from the fact that only the daughter of the sister and not also of the brother is mentioned here,²⁶ there seems to be no opposition intended in the other recommendations of the same Baraita, to love one's relatives and neighbors.

In any case, it can be proved from rabbinic literature that rabbis of the first century whom Geiger considered true representatives of the early Halakah,²⁷ not only taught, but also acted against, the prohibition to marry one's niece, the daughter of their sister. So R. Eliezer b. Hyrkanos, at the instigation of his mother, married a daughter of his sister,²⁸ yet he was, as we well know and Geiger emphasizes, the most consistent Shammaiite after the destruction of the Temple. R. Josē the Galilean married his sister's daughter, was afterwards compelled to divorce her and she married in his lifetime another man (Genes. r. 17, 3), yet R. Josē maintained in his Halakah the conservative tradition, the views of the Sadducees according to Geiger. R. Ishmael who was of the same spirit once tried his utmost to persuade a man to marry his

²³ Ed. Hildesheimer, p. 609.

²⁴ האוהב את שכיניו והמקרב את קרוביו והנושא את בת אחותו והמלוה סלע לעני בשעת דוחקו עליו הכתוב אומר אז תקרא ווי יענה תשוע ויאמר הנני

²⁵ See also Tos. Kiddushin 1, 4; אחותו בת אחותו, לא ישא אדם אשה עד שתגדל בת אחותו, and Nedar. 8, 7, Genes. rabba 80, 4, Midrash Abkir in Yalkut I, 146, RIEJ., XXII, 1890, 87 ff.

²⁶ See Rashi and Tosafot.

²⁷ *Urschrift*, p. 153, and elsewhere.

²⁸ Abot R. Nathan, XVI, 32a; p. Yebam, 13, 13c, 60.

sister's daughter.²⁹ But to pursue Geiger's view that a law which Karaites and Samaritans alike observed is sure to be of antiquity, with reference to the prohibition of marrying one's niece, I refer to the far-reaching dispute of the Shammaiites and Hillelites concerning *צרת הבת*.³⁰ Its basis is the case that a man married his brother's daughter, and the Shammaiites, even earlier representatives of the early Halakah, took no exception to it. And this not merely in theoretical discussions, but also in actual marriages of priests who had to observe the strictest rules in selecting their wives. R. Joshua b. Ḥananiah who had lived in Jerusalem before the destruction of the Temple testified³¹ that such marriages then occurred in so far as a man married his niece and another wife and after his death his brother married his childless widow, the other wife, in accordance with the view of the Shammaiites. If the Sadducee priests had considered such a marriage illegal, they would certainly have eliminated the family from the Temple. And the Shammaiite Dosa b. Harkinas and his brother Jonathan who had lived for many years in Jerusalem before the destruction, would not merely have objected to the marriage of the widow to her brother-in-law,³² but also to the first marriage with a niece. Professor Schechter might argue that it was just this combination of polygamy and of marriage with a niece, permitted by the two schools of Jerusalem between 30 and 50, that made the author of the Zadokite fragment take a stand p. 4, 20-5, 11, especially against the priests who had availed themselves of the new permission. But first nothing in those discussions about the second marriage indicates that the marriage with a niece had not been always permitted; and secondly, we have seen that though opposing polygamy in general, the fragment mentions only the special case when a man, after having divorced his wife, wants to

²⁹ Nedarim 9, 10; comp. 8, 7. Abba, a brother of the patriarch R. Gamaliel II, married the daughter of the latter, Yebam. 15a.

³⁰ Yebam. 15b, and parallels.

³¹ אני מעיד לכם על שתי משפחות גדולות שהיו בירושלים משפחת בית צבועים מכן עכמאי ומשפחת בית קופאי מכן מקושש שהם בני צרת ומהם כהנים גדולים ושמשו על גבי המזבח.

³² Yebam. 16a, and parallels.

marry another, and not the case underlying the above discussion.³³ Consequently this cannot have been the occasion for its attack. All these considerations and facts clearly show that there is no proof for the assumption that the Sadducees of the first century prohibited marriage with a niece.

As to Kirkisani's statement about the Zadokites prohibiting such a marriage, nothing proves that the book from which David Almiḳmaṣ or Kirkisani took this report, was of earlier origin than the eighth or ninth century. In order that this view may not appear hypercritical, I shall refer to Harkavy himself who, on the one hand, believes that the Karaites were the direct successors of the Sadducees, and on the other hand expresses the following opinion as to the origin and age of the book of Ṣadduḳ:³⁴ "Since these proofs (by Kirkisani and Sahl b. Maṣliaḥ from the book of Ṣadduḳ) were used as polemical arguments against Rabbinism, it is highly improbable that the whole matter concerning a book or books of Ṣadduḳ should have been wholly invented; the opponents could then have disarmed the Karaites by asking them to produce the book. Least of all could a plain invention by Kirkisani be assumed, considering the whole character of his literary activity. More probably the matter proceeded in this way: since the destruction of the second Temple the poor remainders of the Sadducees were pining away in secret. At the time of the great sectarian movement in the East in general and in Judaism in particular (seventh or eighth century) the Sadducees came also forward with a polemical book or books against their ancient Pharisee opponents. That book either belonged to antiquity or was composed anew from old traditions; in any case, it was attributed to the founder of Sadduceeism.³⁵ The first Karaites used

³³ In the *Altercatio Simonis et Theophili*, VII, 28 the Christian Theophilus says to Simon the Jew: Similiter aquam luto mixtam volutas, sororem tuam tibi in conjugio copulas. Harnack in *Texte und Untersuchungen*, I, 136 ff. knows no explanation of the two statements. The first refers to the bitter waters in case of suspected adultery (Bergmann, *Apologetik*, 5, 1), the other to the marriage with a niece or sister-in-law.

³⁴ Grätz, *Geschichte*, V, note 17, 4th edition, p. 476.

³⁵ In the Hebrew Grätz, III, 495 Harkavy even says: ורק זה אפשר וקרוב לדעתנו כי לא היה החבור ההוא באמת מצדוק עצמו, רק נתחבר בזמן מאוחר ממנו ונתייחס אליו.

it as a source of Sadducean views adopted by them, and at the same time as a weapon against Rabbanism." According to this argument of Harkavy, Sadduḳ's book originated in the seventh or eighth century. Poznański³⁶ tries to prove that Saadia knew the book; for in the discussion about fixing the new moon he says: "But when one asks the Karaites for a proof from the Bible, they derive it from the 150 days in Genesis 7 by which Šadduḳ rightly proved the reverse of what they try to prove." But later on Poznański himself admits that Saadia could have known that reference directly or merely indirectly. Kirkisani however, he argues, drew a great deal of information about Zadokites which is not otherwise known, and which he does not quote in the name of David Al-Muḳmiš from Šadduḳ's books. He sums up his investigation into that question as follows: "Naturally, it is difficult to establish, by those few quotations, what books are meant, when they were composed, and by what title they bore the name of Šadduḳ. But we can take at least this much for certain that they contained Sadducean views and that the Karaites drew from them without taking exception to them. Those books could have equally been known to Anan who found therein embodied various views of Sadducees."

It seems that neither Saadia who in his attacks on Karaism exhausted all their sources and their literature, nor any of the Gaons who dealt with Karaites, actually saw the book. Had such an ancient and important source of the sect been accessible to Saadia, he would not have failed to disprove its statements. Probably Anan was the first who saw and used it; for, as we have seen, he prohibited marriage with a niece. But strange to say, there is another long and exhaustive exposition of Lev. 18, 18 by Anan³⁷ in which he proved that the marriage with a niece of the wife is permitted, sometimes even together with the wife, though to Anan the niece of the wife is a relative just as near as one's own niece. Yefeth b. Ali rightly exposes the strange inconsistency of Anan;

³⁶ *REJ.*, XLV, 177.

³⁷ Poznański in *REJ.*, XLV, 186 ff.; Harkavy, *Anan*, p. 105.

and it seems that his source gave him no direction on such extensions of the marriage prohibitions, or he did not know it when writing those lines, or did not recognize its injunctions. Now, if the Zadokite fragment was in any way, directly or indirectly, dependent on the book of Šadduk, it could not have been composed before 700 when the book of Šadduk was not yet in existence. And if it is independent of Šadduk's book, yet introduces controversial points which were unknown before the great sectarian movement, it could, at the earliest, have been composed during that movement. I admit that this inference only applies to the two halakic points concerning the marriage with a niece and marrying another wife when the first is still alive, though divorced; but it need not apply to the bulk of Halakas in the second part.

SECTARIAN LAWS IN THE ZADOKITE FRAGMENT

Though no dependence of our fragment on the book of Šadduk could be proved, there is no doubt that some of its legal points are in accord with non-Rabbinic sects of early times. Thus the very interesting law in 12, 13: "Nor shall fish be eaten unless they were split alive and their blood was shed,"³⁸ deserves special attention. Schechter refers to Wreschner's *Samaritanische Traditionen*, p. 51, who mentions Elijah Bashyatsi's report that some Karaites taught that fish must be caught by Karaites, if they are to be fit for food; others taught that death of the fish must ensue during the catching, while fish found dead, whether in the sea or on the shore are considered נבלה.³⁹ Munajja, the Samaritan of the twelfth century, reports that Saadia attacked those views of Samaritans and Karaites.⁴⁰ On the other hand Ibrahim, the Samaritan of the fifteenth century, expressly states that fish and locusts may be eaten without being slaughtered. As Saadia dealt with the subject, it is very probable that already Anan held the view reported in

³⁸ והדגים אל יאכלו כי אם נקרעו חיים ונשפך דמם.

³⁹ שחיטה, אדרת אליהו.

⁴⁰ Poznański in *The Karaite literary Opponents of Saadia*, p. 10 refers to Kirkisani's refutation of Saadia.

the name of Karaites;⁴¹ but nothing indicates that any earlier authority had taught the prohibition. The Book of Jubilees to which our fragment refers and from which, as Schechter has shown, it has derived ideas, knows nothing of a duty to shed the blood of fish. For 50, 12, in the laws concerning Sabbath, enjoins: "Whoever strikes or kills anything, or slaughters a beast or a bird, or whoever catches an animal^{41a} or a bird or a fish, or whoever fasts or makes war on the Sabbath. ..." Fish are only mentioned among the animals which are caught, but not, as birds, among those that are to be struck or killed or slaughtered. On the other hand, *Pirḳē di R. Eliezer*, ch. IX, prescribes it as a duty to pour out the blood of fish.⁴² Considering the character and the late origin of this book, it is highly probable that, as in many other cases, it included a custom or rule which was in vogue in the place of its composition. The custom may have existed for several centuries before its inclusion in the *Pirḳē*; but it is a strange coincidence that its appearance here should point to the same period as its occurrence in Karaite and Samaritan law and as in the Zadokite fragment. All proves that the latter originated in the seventh or eighth century.

But there is a much earlier reference to a heretical teaching about the slaughtering of fish. Several parallel passages in the

⁴¹ Hirschfeld in *JQR.*, XIX, 1907, p. 138, note 2 published from Kirkisani's *Kitāb al Anwār* the passage to which Poznański refers: "The exilarch (Anān) deduces a proof that fish caught by Gentiles are prohibited, from Num. 11, 12 which applies in a like manner to cattle and fish. Just as the term *ישחט* implies that the slaughtering of sheep and cattle must be performed by a coreligionist, the word *יאסף* teaches that "the gathering in" of fish should be done by a coreligionist. And Daniel (*Alḳumiṣi*) argues in a like manner, on the strength of Genes. 9, 4, concerning the prohibition of eating live fish or such (caught) dead." Hirschfeld adds: Saadyah finds two flaws in the opinion of Anan which he endeavors to expose (in the fragment quoted) at some length. I may add that as the well informed Kirkisani quoted only Anan and Daniel, he cannot have found anything similar in earlier sources like the book of Ṣaddūq. See also 4 Ezra 6, 48.

^{41a} Animal is the translation *חיה* = beast, Lev. 17, 13.

⁴² *ואלו ששרצו מן המים דגים וחגבים נאכלין שלא בשחיטה אבל העוף אינו נאכל אלא בשחיטה. אלו שנבראו מן המים דמן לשפוך כמים ואלו שנבראו מן הארץ דמן לכסות בעפר*, see Israel Lévi in *REJ.*, LXI, 201, 3.

Midrash⁴³ report that Jacob of Kefar Nibburaya (of the fourth century) taught in Tyre that fish required slaughtering; to R. Ḥaggai who declared that teaching erroneous and its author worthy of stripes, he quoted Genes. 1, 20 where birds and fish are by juxtaposition shown to be equal in law. Evidently he interpreted *וְעוֹף* to be an accusative governed by *יִשְׂרָצוּ* just as *נֶפֶשׁ חַיָּה* and birds to have been created out of the water just as fish.⁴⁵ The rabbis, on the other hand, separated the second half of the verse from the verb and taught that the birds were not created out of water, but out of alluvial mud⁴⁴ (*Ḥullin 27b*), and derived from Num. 11, 22 that fish required nothing but catching. It is not reported that Jacob Nibburaya was the author of that teaching, or whether he adopted it from some existing sect; nor is it evident whether it appeared to R. Ḥaggai novel or whether he knew it as sectarian, and that is why he declared the Jewish teacher who applied it, worthy of punishment. Whatever the case, the teaching of the Zadokite fragment is not identical with that rule, as it merely requires pouring out of the blood by splitting, not slaughtering, a very essential difference pointing to materially different derivations from an unknown source. In addition to this, Jacob of Nibburaya seems to have dealt only with the question of slaughtering fish, while the fragment also adds: But all the locusts

⁴³ Genes. r., 7, 2; *Pesikta rab.*, XIV, 61a; *Tanḥuma B.* חוקת, 15, Num. r., 19, 3; *Kohel. r.*, 7, 23 (*Bacher, Pal. Amoræer*, III, 711): יַעֲקֹב אִישׁ כֹּפֵר נְבוֹרָאֵי הוֹרָה בְּצוֹר דְּגִים טְעוֹנִין שְׁחִיטָה. שָׁמַע רַבִּי חֲגִי שֶׁלַח לִיה תָּא לָקִי. אָמַר לִיה, בַּר אֵינֶשׁ דָּאֲמַר מִלְתָּא מִן אֲוֵרִיתָא לָקִי. אָמַר לִיה מִנִּין הִיא דְּאֲוֵרִיתָא. אָמַר לִיה מִן הָדָא דְכָתִיב וַיֹּאמֶר אֱלֹהִים יִשְׂרָצוּ הַמִּים שֶׁרֶץ נֶפֶשׁ חַיָּה וְעוֹף יַעֲוֹפָא עַל הָאָרֶץ. וְמָה עוֹף טְעוֹן שְׁחִיטָה אִף דְּגִים טְעוֹנִין שְׁחִיטָה. אָמַר לִיה לֹא הוֹרִית טַב. אָמַר לִיה מִנִּין אַתְּ מוֹדֵעַ לִי. אָמַר לִיה רַבִּיעַ וְאַנָּא מוֹדֵעַ לָךְ דְּכָתִיב הִצֵּאן וּבָקֶר יִשְׁחַט לָהֶם וּמִצֵּא לָהֶם וְאֵם אַתְּ כָּל דְּגֵי הַיָּם יֵאָסֶף לָהֶם וּמִצֵּא לָהֶם, יִשְׁחַט אֵין כָּתִיב כָּאֵן אֵלָא יֵאָסֶף. אָמַר חֲבוּשׁ חֲבִטֵךְ רִצּוֹף רִצּוֹף דְּהִיא טַבָּא לֹאֻלְפָּנָא

⁴⁴ See Schechter, p. LI, note 24.

⁴⁵ In *Ḥullin 27b* there is reported a question of—according to the commentaries—קונטריוקון the hegemon addressed to R. Gamaliel or R. Johanan b. Zakkai about the contradiction between Genes. 1, 20: birds were created out of the water, and 2, 19: birds were created out of the earth; and the rabbi answered: they were created out of the alluvial mud; to his disciples, however, he says that they were created out of the water.

after their kind shall come into fire or into water whilst they are still living, for this is the manner of their creation.⁴⁶ On this very strange law not even Pirkē R. Eliezer agree with the fragment;⁴⁷ Schechter suggests that, according to our author, the elements of water and fire are to be found in the composition of the locust, hence they shall be killed by water or fire. But since fish which was created out of the water, was not to be killed by water, but by splitting, it seems that some other principle underlay his rule. Every animal must first be killed, in order to cease to be a living creature; as the locust has no blood, no knife nor any sharp instrument need or must be used, so that only drowning or burning is left. According to Pirkē di R. Eliezer also the locust, just as fish, was created out of the water and therefore requires, beside killing, pouring out of its blood, i. e. splitting.⁴⁸

Another law in the Zadokite fragment seems to point even to much earlier times. The second of the three sins for which the author strongly blames his opponents (5, 6), is this:⁴⁹ They

כל החגבים במיניהם יבאו באש או במים עד הם חיים כי הוא משפט
בריאתם.

⁴⁶ The Samaritan Ibrahim b. Jacob (Wreschner, p. 52) says that scholars hand down that the locust has to be killed in water.

⁴⁸ According to ספר העשור in הלכות שחיטה, Saadia himself taught that dead locusts were prohibited for food, while fish found dead were permitted. R. Hai Gaon who was asked to account for this inconsistency of Saadia, in a Responsum to the Jews of Sijilmessa replied that he had never before heard that Saadia prohibited locusts found dead (B. Goldberg, *R. Jehuda b. Koreisch Epistola*, Introduction, p. XVII, Harkavy in Horodezky's הגורן, II, 888), R. Hai concludes his argument by the characteristic words: מאן דאמר מתים אסורים אטו לשחיטה מצרכי לחן או לחניקה ביד ישראל, are the locusts to be alive in order to be slaughtered or to be strangled by a Jew? It seems to me that he had in mind the respective representatives of the two views that locusts must either be slaughtered or strangled by a Jew, the one taught by Jacob of Kefar Nibburaya, the other by Karaites. See also Kirkisani against Saadia in Poznański, *The Karaite literary Opponents of Saadia*, p. 10, and Ginzberg, *Geonica*, II, 43, 45; Ponański, in *ZfhB.*, IV, 73.

⁴⁹ וגם מטמאים את המקדש אשר אין הם מבדילים כתורה ושובבים עם הרואה
את דם זובה.

also contaminate the sanctuary, as they separate not according to the Law and lie with her who sees the blood of her issue." As he has given no further explanation of his charge, nor of the sinful observance of the other side, it is difficult to see with whom he sided; for there was an essential difference between Rabbanites, Samaritans, and Karaites about the law of the menstruous woman. Schechter did not pursue the matter, but merely referred to Wreschner's thorough chapter on the subject. According to Mishnah Niddah 4, 1 the Samaritan women were stricter than the rabbis and considered blood of every color levitically unclean. R. Meir⁵⁰ remarks that this strict observance would be a great thing, if the consequences of the strictness would not lead to a serious mistake, inasmuch as the Samaritan women include in the week of purity the day on which they notice blood, which is according to the rabbis levitically clean, and consider themselves clean before the time. According to another explanation, they count the day on which the bleeding stopped as the first of the purification. A Samaritan would, consequently, feel justified in charging the rabbis and their followers with acting against the law by treating a woman on the first day of her showing green or yellow blood as still clean. Now, according to Mishnah Niddah 4, 2, also the Sadducees followed the Samaritan view.⁵¹ One teacher of the second century remarks that Sadducee women are in this respect to be considered exactly the same as Samaritan women, if they adhere to the ways of their fathers, but if they give those up and walk in Jewish ways, they are like Jewesses. R. Josē says: They are always to be considered Jewesses, unless they resolve to walk in the ways of their fathers. Now, the teachers discussing the position of Sadducee women lived in the second century, so that their opinions would appear to be merely

⁵⁰ Niddah 33a: תניא אמר רבי מאיר אם הן יושבות על כל דם ודם תקנה: גדולה היא להן. אלא שרואות דם אדם ומשלימות אותו לדם ירוק. דבר אחר יום שפוסקת בו סופרתו למנין שבעה.

⁵¹ בנות צדוקין בזמן שנהגו ללכת בדרכי אבותיהן הרי הן ככותיות. פירשו⁵² ללכת בדרכי ישראל הרי הן כישראליות. רבי יוסי אומר לעולם הן כישראליות עד שיפרשו ללכת בדרכי אבותיהן.

theory. But in the Talmud a Baraita reports:⁵² "Once a Sadducee, in conversation in the street, happened to spit on the garments of a highpriest; the latter was very much upset and went to inquire of his wife about the observance of the purity law on the part of Sadducee women. She told him: Though they are the wives of Sadducees, they are afraid of the Pharisees and show their blood to the scholars. According to R. Josē, she said: We know them very well, they show their blood to the scholars, except one woman in our street who refused to do so and died." The incident is reported by the same scholar who stated the rule, and thus we learn of the actual observance of Sadducee women not long before the destruction of the Temple. And when the Zadokite fragment blames the opponents for having intercourse with menstruous women, it could mean the Sadducees who, against their own law, accepted the rule of the Pharisees, and, after defiling themselves by following new Pharisaic practice, defiled the sanctuary. The express reference to the Temple seems to support that date and to prove the book as having been composed before the year 70. On the other hand, we know that not only Samaritans and Jews in the twelfth century differed on the same point, but also the Karaites of the same time.⁵³ As Saadia attacked the Karaites on this point, it is very probable that already Anan had adopted and taught the Sadducee view; and as Kirkisani, when dealing with the matter, does not refer to the book of Sadduk, this source probably contained nothing about it. As מקדש can mean the synagogue to which according to Anan the same laws of purity apply as to the court of the Temple,⁵⁴ there is no argument or proof

מעשה בצדוקי אחד שספר עם כהן גדול בשוק: ⁵² Niddah 33b, Tos. 5, 3: ונתזה צנורה מפיו ונפלה לכהן גדול על בגדיו, והוריקן פניו של כהן גדול וקרם אצל אשתו. אמרה לו אף על פי שנשי צדוקים הן מתייראות מן הפרושים ומראות דם לחכמים. אמר רבי יוסי בקיאינן אנו בהן יותר מן הכל והם מראות דם לחכמים חוץ מאשה אחת שהיתה בשכונתנו שלא הראתה דם לחכמים ומתה.

⁵³ Wreschner, *Samar. Traditionen*, p. 30 and 33. In addition to this, Abulfath reports that the Dositheans altered the time of reckoning the days of the purification of women, inasmuch as the woman should commence to count them only from the day following the bleeding, as the festivals extend from evening to evening.

⁵⁴ Harkavy, *Anan*, p. 53 ff.

against the conclusion derived from the consideration of other legal points that the Zadokite fragment was composed shortly before the time of Anan.

Another halakah concerning the law of levitical purity deserves some attention, though rabbinic literature affords no parallel or illustration. Immediately after the law prescribing the splitting of fish and killing of locust, we read:⁵⁵ "And all wood and stones and dust which will be polluted by the uncleanness of man shall be polluted like them: according to their uncleanness shall be unclean he who toucheth them." First, as Schechter states, the things mentioned are in rabbinic law not defilable, being merely stuff not shaped into a vessel or a tool.⁵⁶ But even granted that such can be defiled, it is against rabbinic rule that the uncleanness of man should be several times transferred and retain its original degree of impurity; for **טומאת האדם** includes according to Levit. 5, 3 and 22, 4, 5 several kinds of defilement which are not all of equal power. Of those only a dead human body transfers its impurity to a person and he, in his turn, transfers the acquired impurity to a vessel, but not to another person. Vessels defiled by a dead human body transfer their impurity to other vessels or to a person unchanged, but in a third instance the degree of uncleanness is reduced; an earthenware vessel cannot transfer its impurity without reduction.⁵⁷ Only if we assume that the author meant exclusively a defilement by a dead human body, does the unchanged transference of the impurity of things to a person who touched them, agree with rabbinic law⁵⁸ as represented in the halakic Midrash by rabbis of the school of Jamnia and Lydda. We do not know whether it was taught before the destruction of the Temple. If, however, the author of the Zadokite fragment referred to all kinds of impurity of man, there is no parallel except in the book of Munajja, the Samaritan of the twelfth century,

⁵⁵ p. 12, 15: **וכל העצים והאבנים והעפר אשר יגאלו בטומאת האדם לגאולי** וכל העצים והאבנים והעפר אשר יגאלו בטומאת האדם לגאולי. Instead of **לגאולי שמו בהם** Schechter reads **יגאלו כמוהם**.

⁵⁶ Should not **וכל העצים** be emended into **וכלי העצים** ?

⁵⁷ Maimonides, **טומאת מת**, 5.

⁵⁸ Sifre, Num. 158, on Num. 31, 24, and parallels, Sifre, Num. 130, 127.

who emphasizes against the Jews that things defiled transfer in their turn the defilement to other things, these to others and so *ad infinitum*.⁵⁹ I remember no reference in the Talmudic literature which would indicate the existence of such a rule in Palestine or Babylon in the first five centuries of the present era, and even among the Samaritans, to my knowledge, it is not reported before the twelfth century.⁶⁰

NOT DOSITHEAN

The examination of some of the halakic parts of the Zadokite fragment confirms the conclusion derived from a comparison of the book with the details preserved of the book of Šadduḳ: there is nothing to prove its early origin or its composition in the first century; there is not one among the laws discussed cogently demanding for its existence and practice any time before the seventh or eighth century; there is no evidence so far for the Sadducean character of the book, none to establish a relation of the fragment to the Sadducees of the time of the Temple, nor to the book of Šadduḳ. Some of the details inquired into go even to prove that it was composed about the time when Anan founded Karaism and when several other sects separated from the body of Judaism. Its peculiarities in the Halakah have parallels in Karaitic and in Samaritan law of later times, thus defining its

⁵⁹ Wreschner, *Samar. Traditionen*, XXIV. It is the Samaritans only who consider even the dust touched by non-Samaritans defiled; see *Itinerarium Antonini*, ed. Geyer, p. 164, Kaufmann's *Gedenkbuch*, p. 16, note 1; Wreschner, XVI.

⁶⁰ Perhaps Sifra on Levit. 5, 2, p. 22d, § 12 could be interpreted to have known that law. It reads: **או נפש אשר תגע בכל דבר טמא הוקנים הראשונים** **היו אומרים יכול אפילו אם נגע אדם במגע טמאות יהא חייב הלמוד לומר בנבלת** **היה בנבלת בהמה בנבלת שרץ, מה אלו מיוחדין שהן אבות הטומאה, יצא דבר שאין** **אב הטומאה**. Early scholars limited the defiling power of impurities to the first sources of such, and excluded transferred uncleanness. It would seem that before those scholars any impurity of lower degree could be transferred to man. But we know nothing of such a view. Judah Hadassi in **אשכול הכופר**, Alphabeta 96, end, p. 41c, reports that Samaritans wash after a slight defilement; the same 97, beginning, in both cases in the name of David Almukmiš. Schorr in **החלוץ** VII, 37 quotes the Persian religious law in which stone and earthenware vessels are most liable to defilement.

character as non-Rabbinic; but they are not sufficiently distinctive to determine in a positive way its position among the sects. Schechter (p. XXII ff.) suggests that our book represented the view of the sect of the Dositheans; but the material at our disposal about this branch of the Samaritans arrayed by him, is not only not conclusive, but has not even a real parallel in our fragment. For the months of thirty days in the calendar of the Dositheans cannot be traced, as was shown, in our book. As to their strictness in the observance of the Sabbath, it is strange that just the details reported by some Fathers of the Church and by Abulfath in their characterization of the Dositheans, are, as Schechter also notes, not to be found in the fragment. The former would not move on the Sabbath from their places or their position;⁶¹ p. 11, 5 our author only prohibits to follow one's cattle to feed it outside the town further than 2000 cubits. According to Abulfath, the Dositheans taught that one must not drink on the Sabbath from vessels of metal or glass; our fragment forbids to draw water in a vessel. The Dositheans say, that one must not feed the cattle or give them to drink on the Sabbath, but the food should be placed before them on Friday; our author allows to drive the animals outside the town. Only the peculiarity stated by Epiphanius that some of the Dositheans abstain from a second marriage, has a parallel in the prohibition against marrying a second wife while the first is still alive; but even that is not quite certain. On the other hand, all other distinctive laws of the Dositheans cannot be traced in our book. Though Dr. Kohler has accepted and pursued the idea of the Dosithean origin of the fragment, it appears to me far from being proved.

Schechter (p. XVIII) also says: "Likewise, the laws concerning the Sabbath that play such an important part with the sect, agree in the main with those given in the Book of Jubilees to which also the Samaritan and Karaitic code offer some important parallels, but they differ in many respects from the Pharisaic code." Considering the unique position which that book occupies in the Apocalyptic Literature, the agreement of our fragment with those laws would certainly tend to indicate the character of our

⁶¹ Hilgenfeld, *Ketzergeschichte*, p. 157.

book. But already a superficial examination of the Sabbath laws from p. 10, 14 to 11, 18 reveals full agreement of the details with rabbinic law in the Talmud, but with none of the characteristic prohibitions of Jubil. 50. First we should expect the prohibition of intercourse with one's wife (Jubil. 50, 8), all the more as the Samaritans⁶² and the Karaites from the times of Anan⁶³ strictly observed it. Its omission tells us more than other laws about the circle from which our fragment could not have proceeded. We know from the Mishnah Nedar. 3, 10 that the Sadducees did not agree on this point with the Samaritans; and as Kirkisani, when dealing with the matter, only mentions Anan, but not the book of Sadduk,⁶⁴ we may infer that neither Sadducees nor Zadokites knew anything of the prohibition. Another prohibition peculiar to the Book of Jubilees is that against fasting and fighting on the Sabbath (50, 12). Schechter suggests that in **אֵל יתערב איש מרצונו בשבת** (11, 4) the second word should read **יתרעב** = starve oneself; but it would be strange that religious fasting should have been expressed in this way, apart from the consideration that it is put in a rather unsuitable group of laws.¹⁵ The prohibitions which the fragment has in common with Jubilees and rabbinic, or Karaite law, would naturally have been arranged in the same or a similar order, as Jubilees have them, if this book had, as Schechter thinks, influenced the long list of prohibitions concerning the Sabbath. There is a much closer relation between the non-rabbinic laws in that list and the Samaritans and Karaites than there is between them and the Book of Jubilees; yet nothing justifies the assumption that it was Sadducean. As to the rest, it is the rabbinic law: the

⁶² Schorr in **החלוץ**, VI, 30 ff. proved that already the Samaritans in the times of the Mishnah observed it, and the rabbis in opposition to them recommended such intercourse on the Sabbath and that the institution of Ezra to eat garlic on Friday night (*Baba kamma* 82a, p. Megillah, 4, 75a, 27) was for this purpose. See also Kirchheim, **כרמי שומרון**, 27; Frankel, *Einfluss der pal. Exegese*, p. 252.

⁶³ See Schorr in **החלוץ**, VI, 31 ff.

⁶⁴ Harkavy in Grätz, *Geschichte*, IV, 478 says that Anan took the prohibition from the Sadducees who derived it from **לֹא תַעֲשֶׂה כָּל מְלָאכָה**, but mentions no source for this; where is it to be found?

⁶⁵ Unless 5, 3 the dirty garments are those of mourning and fasting.

fixing of the time when before nightfall the Sabbath begins, not to talk useless things, not to discuss matters to be done on Sunday, not to walk beyond two thousand cubits outside the city, not to draw water in a vessel, not to ask a non-Jew to do one's work, not to put on soiled garments, or such as were brought by a non-Jew unless washed in water or rubbed with brickdust,⁶⁶ not to spend the Sabbath in a place inhabited by non-Jews, not to drive cattle beyond two thousand cubits outside the town, not to strike it, not to carry anything from or into the house, not to open a stuck vessel, not to carry outside the house spices, not to take up a stone or earth, not to carry a child, not to provoke a servant, not to assist an animal in casting or one that fell into a pit, etc. The author seems to have known not merely the earlier Halakah of the rabbis, but, exactly as Anan, he knew the Talmud itself, the laws of which he adopted either without any change or in making some of them stricter.

RABBINIC INFLUENCE

That he knew rabbinic law, is evident from his attitude towards the privileged position of the priest (13, 2): "And when there will arise ten, the man⁶⁷ who is a priest learned in the Book of Hagu⁶⁸

⁶⁶ They are defiled by the non-Jew and not fit for the Sabbath which is considered holy, of holy purity. לְבוֹנָה is not incense, but as עֹפֶר לְבִינְתָא עֹפֶר לְבִינְתָא שְׂרִי in Shabbat. 50b powder of a pounded brick.

⁶⁷ אִישׁ is not the Mishnic כֹּהֵן גָּדוֹל, but, as, אִישׁ מֵהַלְוִיִּם in the next line shows, is to be translated as אִישׁ מִן הַכֹּהֲנִים.

⁶⁸ The book is mentioned again in 10, 6 and 14, 7: שֶׁשֶׁ מְבוֹנְנִים בְּסֵפֶר "judges may be versed in this book and the teachings of the covenant"; and so the priest must be versed in this book. The nearest would be to see in it the Torah itself which has to guide the priest and the judge in their decisions. This is supported by the addition of יְסוּדֵי הַבְּרִית (7, 511) which mean the special laws of the covenant of the sect. On the other hand, we find that the wording of the laws in the Torah was in some instances differently interpreted by them, as in the marriage law, levitical purity, Sabbath, and holidays, so that the members are expected to act כַּפְרוֹשׁ הַתּוֹרָה 4, 8; 6, 18, 20. Now we find in 13, 6 פְּרוֹשׁ הַתּוֹרָה immediately after בְּסֵפֶר הַהֶגְו "the מְבַקֵּשׁ shall teach the ignorant priest in case he has to decide a question of leprosy, the interpretation of the Torah." From this it seems that סֵפֶר הֶגְו means the Torah with the interpretation

shall not depart. According to his word shall they all be ruled. And if he is not versed in all these but a man of the Levites is versed in these, then it is his lot that all those who enter into the camp shall go out and come in according to his word. And if there is in a man a question concerning the law of leprosy, then the priest shall go and stand in the camp and the מבקר shall instruct him in the interpretation of the law; and if he is ignorant, he (the priest) shall shut him up, for unto them belongs the Judgment." Already Schechter refers to Hillel's interpretation of the same law⁶⁹ who admits that a priest, even an insane one, must pronounce the purity or impurity of the man, but only, after he was instructed by a scholar. The same is the attitude of our author, and he seems to have adopted the rabbinic Halakah, merely substituting פתי for שוטה.⁷⁰ Now, from a parallel⁷¹ we learn that this influence of the scholar in the decision of an ignorant priest

of the teachers of the sect, as in 20, 6 מדרש התורה. As this is identical with oral law and the author would not use for it the rabbinic תורה שבעל פה he invented this artificial denotation. Its meaning can be derived, without difficulty, from the rabbinic הגה = pronounce, Sanhedrin 10, 1: התורה את שם המפורש in פרש השם באותיותיו p. Megillah, 4, 74d, 50: אפילו רגיל בתורה כעזרא לא יהא הוגה מפיו וקורא = pronounce orally. Comp. טעם זקנים, p. 57, where R. Hai writes: וכל רבותינו ואבותינו אוסרים להזכיר שם המפורש בבבל. וכשמזכירין אין אומרים אלא אדני כי מועתק הוא בקריאתו והגיונו ומסור מאחד לאחד ואין אומרים אותו אלא בקדושה ובעת צרה הוא בכל עת וענין בהא אמרי. It is, therefore, exactly the same statement as Anan's (Harkavy p. 22) למגמר אורייתא (Harkavy p. 22) ופירושה.

ללמד שאין טומאה וטהרה: § 8, Negaim 3, 1: Sifra on Lev. 13, 2, p. 60b, § 8, Negaim 3, 1: אלא מפי כהן. הא כיצד, חכם שבישראל רואה את הנגעים ואומר לכהן אף על פי שוטה אמור טמא והוא אומר טמא, אמור טהור והוא אומר טהור.

מאיש 20, Ezek. 45, 20: It is true, we find פתי in a similar meaning in Ezek. 45, 20 מאיש 20 where the Targum renders it by ומופשש = foolish, and even with the verb הכין in Ps. 119, 130 פתים; yet it seems here different.

§ 15, Tos. Pesahim 6, 1, 33a, 67; Sifra on Lev. 13, 37, p. 66d, § 15, Tos. Negaim 1, 16: על שלשה דברים עלה הלל מבבל. טהור הוא יכול יפטר וילך. לו תלמוד לומר וטהרו הכהן. אי וטהרו הכהן יכול אם אמר הכהן על טמא טהור יהא; Geiger, Zeitschrift, II, 46 ff.

and, at the same time, the careful preservation of the privilege of the priest in his formal declaration was due to Hillel. An author who adopted this law, can hardly have been a Sadducee. The same is evident from p. 12, 8 where he prohibits to sell to a non-Jew clean animals, for they might be bought for sacrificial purposes. The rabbis prohibited the same,⁷² as it seems, soon after the destruction of the Temple; and, if the author of the Zadokite fragment borrowed it from rabbinic sources, he cannot have written it before the year 70. A much later date is indicated by the reference to excommunication on p. 20, 6: "And when his deeds shall appear according to the interpretation of the Law in which walk the men of perfection of holiness, no man shall associate with him in wealth and labor, for the saints of the most High above cursed him." No such exclusion from society is known to me before the time of the Tannas;⁷³ and the reason given for the prohibition against having business dealings with the banned: "for the saints of the most High have cursed him," has, as far as I remember, some kind of a parallel only in the *Pirḳē di R. Eliezer*⁷⁴ and in *Responsa* of the Gaons of the tenth and eleventh century.⁷⁵ It is hardly accidental that just that book offers a similar detail, as it contains a parallel to the pouring out of the

מקום שנהגו למכור בחמה דקה לנכרי מוכרין מקום 16: Abodah Zarah 1, 16: שנהגו שלא למכור אין מוכרין. ובכל מקום אין מוכרין להם בחמה גסה עגלים וסייחים שלמים ושבירים. As Ben Betherā is identical with R. Judah b. Betherā, the discussion took place between 90 and 140. But there is an earlier reference to the prohibition in the Baraita in Abodah Zarah 7b. תניא אידיך נחום המדי אומר מוכרין להם סוס וזכר וזקן במלחמה. אמרו לו נשתקע. "Naḥum the Mede said: We may sell to them a male and an old horse in time of war; his colleagues answered him: This statement has never been made by anybody (Rashi)." Naḥum lived shortly before and after the destruction of the Temple (Tos. Baba batra 9, 1; b. Ketubbot 105a; Nazir 5, 4). We know nothing about an earlier treatment of the subject.

⁷² Moed kaṭan 15a ff.

⁷⁴ Ch. XXXVIII: ובחרם בית דין העליון ובחרם בית דין התחתון, see *REJ.*, XLIII, 51 ff.

⁷⁵ Aruch, s. v. הסת, III, 229a, תשובות הגאונים, ed. Lyck, No. 9; *REJ.*, l. c., p. 52 ff.

blood of fish.⁷⁶ It is difficult to say which stage of development of the confession of sin is represented by the formula p. 20, 28: "we have sinned, we have committed wickedness, and we have done perversely (?), we and also our fathers, because they walked contrary to the laws of the covenant, and true is thy judgment against us."⁷⁷ The last three words correspond to Nehem. 9, 33 which verse forms part of the Jewish confession.⁷⁸ The synonyms for sin are taken from the form of the same prayer in which it was preserved by European rabbis of the eleventh to the fourteenth centuries.⁷⁹ It is from the times of the Gaons and possibly even earlier, since the highpriest in his confession in the service in the Temple of Jerusalem also said three verbs for sin.⁸⁰ The author knew the confession in the liturgy of the Jews in Talmudic times, therefore, his book could not have been composed before then.⁸¹

⁷⁶ Above, p. 442.

⁷⁷ ויתדו לפני אל חטאנו רשענו ועוינו (?) אנחנו גם אבותינו בלכתם קרי בחקי הברית ואמת משפטך בנו.

⁷⁸ Pesikta rab., XXXV, 160: אבל אנחנו חטאנו והם אומרים בלשון הזה, אכל אנחנו חטאנו העוינו הרשענו פשענו מרדנו ומרינו וסרנו ממצותיך ומשפטך ולא שוה לנו ואתה צדיק על כל הבא עלינו כי אמת עשית ואנחנו הרשענו.

⁷⁹ R. Aaron of Lunel in אורחות חיים, p. 106 *bc* says: אבל חטאנו אנחנו ואבותינו ועוינו ופשענו וסרנו ממצותיך ... ולזה נוטה דעת בעל העתים דלא אמרי ... טפי מהני ארבע אבל חטאנו אנחנו ואבותינו ועוינו ופשענו וסרנו ממצותיך ועל R. Menahem Meiri, quoted in Grätz's *Monatsschrift*, XXXVI, 412, says: ואל דרך זה היה נוסח הוידוי בימי הגאונים שלא היה בו אלא ארבע מלות בלבד, חטאנו אשמונו העוינו והרשענו וסרנו ממשפטך ...

⁸⁰ See Yoma 3, 8; Ibn Gayyat, שערי שמחה, p. 62; Poznański in *JQR.*, X, 252, 2.

⁸¹ This, if correct, would dispose of the suggestion of Dr. Margoliouth that the fragment represents the view of the early Jewish-Christian community in Damascus. But to meet his arguments, it is necessary to point out this. Epiphanius (*Haeres*, XXX, 2) says that the Ebionites like the Samaritans avoid touching a non-Jew and bathe after cohabitation on getting up. This agrees with our book (11, 3; 11, 14), though exact agreement cannot be stated. Also the slight of King David is found with the Ebionites: they jeer at and curse David and Solomon (XXX, 18). But they extend

It must further be pointed out that the author of the fragment derives his new halakas not merely from an interpretation of verses in the Pentateuch, but also several times from Prophets and Hagiographa. It is true, we find Shammai derive from II Samuel 12, 9 the law that a man who deputed another to commit a murder is responsible for the act;⁸² but this is one of a very few exceptions. That Sadducees should have considered all books of the Bible of equal importance for the derivation of halakas, is nowhere reported; though the fact that the authorities in the times of Hananiah b. Hezekiah b. Garon intended to exclude the book of Ezekiel from the canon owing to its contradictions to the Pentateuch,⁸³ indicates that some school emphasized the laws as stated in the prophets. I need hardly say how improbable it is that just the Sadducees should have done so. On the other hand we find that Anan derived his halakas from all parts of the Bible indiscriminately, and Harkavy draws special attention to this his peculiarity.⁸⁴ Is this agreement of the Zadokite fragment with

this attitude to all prophets, Isaiah, Jeremiah, Daniel, Ezekiel, Elijah, and Elisha, just as the Samaritans (Hilgenfeld, *Ketzergeschichte*, 431 f.), while our fragment evinces the highest respect for and recognition of the prophets. Epiphanius further says that the Ebionites married twice, three times, even seven times; our author limits marriages. They reject all blood sacrifices (XXX, 16); our fragment not only does not oppose them, but prescribes some and presupposes the existence of a sacrificial Temple of the sect. Similarities between the Christian organization in the Syriac *Didascalia* and our fragment were emphasized by Dr. Kohler in the *American Journal of Theology*, 1911, 433; they are all very interesting and deserve attention on account of the geographical relations of the two books, but they are insufficient to explain our fragment. It is well known that the *Didascalia* attacks the observance of the Ebionites more fiercely than the practices of the Jews.

⁸² Kiddushim 43a: תני האומר לשלוחו צא הרוג את הנפש הוא חייב ושולחיו פטור. שמאי הזקן אומר משום חגי הנביא שולחיו חייב שנאמר אותו הרגת בחרב בני עמון.

⁸³ Hagigah 13a; Shabbat 13b.

⁸⁴ Anan, p. XI: לענין הוצאת הדינים חשב ענן את ספרי הנביאים והכתובים. כמו תורת משה ודקדק במלותיהם ואותיותיהם כמו במלות התורה ואותיותיה. כאשר נראה בפרשות דיני מילה (מספר יהושע ויחזקאל) דיני יבום וחליצה (ממגלת רות).

Anan's consistent method of deriving laws accidental, or is it, as several other points stated before, due to their common origin in the eighth century? The haggadic interpretation of prophetic passages is even more peculiar; and the mere reading of the one instance p. 7, 14-21 as exposition of Amos 5, 26, 27 reveals it as foolish and without the remotest parallel even in the freest rabbinic Haggadah.⁸⁵ There is in Jewish literature nobody with whose interpretations it could be compared, except Anan's halackic derivations.

TEMPLE AND SACRIFICES

The accumulated evidence for the late composition of our fragment is strongly opposed by several clear references to sacrifices apparently still practised. Thus 9, 13 states: "If any recompense is made for that which has no owners, he who makes the recompense shall confess to the priest, and it shall all belong to him, besides the ram of the guilt-offering." And 11, 17: "No man shall bring anything on the altar on the Sabbath, save the burnt-offering of the Sabbath, for it is written, Save your Sabbaths.. No man shall send to the altar burnt-offerings or meat-offerings or frank-incense or wood through the hand of a man contaminated by any of the uncleanness, allowing to contaminate the altar...." 12, 1: "No man shall lie with a woman in the city of the Sanctuary to contaminate the city of the Sanctuary by their uncleanness." And in 16, 13: "As to the law of offering, no man shall vow anything for the altar under compulsion; nor shall the priests take anything from the Israelites." As all these rules are placed between laws concerning everyday life, there can be no doubt that they were given in order to be practised. They were addressed to the colony in Damascus to which our book is devoted, and we learn from them that those Jews sacrificed outside their central sanctuary in Palestine. Whether they lived there in the seventh century or when the Temple in Jerusalem still stood, it was equally strange and irregular that they brought sacrifices in Damascus, or even more unlawful when the Temple still existed. Again it is more probable that such worship was

⁸⁵ וכיון צלמים הם ספרי הנביאים אשר בזה ישראל את דבריהם

introduced in Damascus as a continuation of that practised in Palestine, than that it was the resumption of an old custom that had ceased to be observed. This would suggest either Jerusalem and Judea before the year 70, or Shechem and Samaria before the time when the Samaritans ceased bringing all the sacrifices prescribed in the Torah. As we learn from Abulfath that the Emperor Zeno (474-491) forbade the Samaritans to burn, char, or destroy anything with fire, which meant the offering of sacrifices,⁸⁶ the reference of the Zadokite fragment could in that case allude to conditions before the year 486. But whether and when the sacrifices were after that resumed, is not reported; it would not appear improbable that the Moslems gave the Samaritans in Shechem permission to sacrifice.

The place whence the colonists in Damascus emigrated, is, strange to say, not mentioned, though several times referred to in an apparently clear manner. Jerusalem does not occur in the book,⁸⁷ but the emigrants come from the land of Judah (4, 3), yet they are never called Judeans, but Israelites (6, 2 and 8, 16). Is this merely the biblical style of the prophet Ezekiel, or does he mean non-Judeans in Judea? It is true, in 1, 3 he speaks of Israel and its sanctuary (6, 12) where he seems to refer to the kingdom of Judea and the Temple of Jerusalem, as immediately after this the delivery into the hand of Nebuchadnezzar is mentioned. The leader of the restored nation will be descended from Israel and Aaron (1, 7), the nation itself is Israel (1, 5; 4, 4; 3, 19) to whom a teacher of falsehood preaches (1, 14; 4, 13; 5, 20); all Israel goes astray (3, 14) and through the obedient God makes a new covenant with Israel (3, 13). But most instructive is p. 7, 9-14 where the author tells us that God visited the land and punished the wicked, the backsliders were killed by the sword, while those who held fast to the laws escaped to the north; on those who rejected the laws, the words in Isaiah 7, 17 about the

⁸⁶ Montgomery, *The Samaritans*, p. 112, explains the prohibition to refer in part to the peculiar fire-purifications prevalent amongst the Samaritans; so also on p. 319. But the many verbs clearly point to sacrifices.

⁸⁷ p. 20, 22 in the second fragment we read מְבִית פֶּלֶג אֲשֶׁר יָצְאוּ מֵעִיר יְרוּשָׁלַיִם עִיר הַקֹּדֶשׁ, the group of separatists who left the holy city; in Isaiah 1 speaks for Jerusalem, the same Nehem. 2, 1.

separation of Ephraim from Judah were fulfilled. To this verse he adds the comment: When the two houses of Israel separated, Ephraim departed from Judah and the backsliders were killed by the sword and the observant escaped to the land of the north. It seems that the emigrants are denoted as Ephraim, corresponding to the Israelites emigrating from the land of Judah. We only know of the Samaritans that they called themselves descendants of Joseph and Israel; but nothing is known of Samaritans who settled in Judea before the destruction of the second Temple. On the other hand, there was in the fifth century a large community of Samaritans in Cæsarea,⁸⁸ at the time of the Moslem conquest a community in Lydda, later in Ramla, in Joppe, Ashkelon, and Gaza; and, as inscriptions found show, also in Emmaus-Nicopolis south-east of Lydda.⁸⁹ To this may be added that Benjamin of Tudela found in Damascus 400 Samaritans. I am fully conscious of the difficulties of assigning our fragment to a Samaritan author; the frequent reference to the prophets is quite sufficient to exclude a Samaritan. But I see no possibility of accounting in any other way for the worship of sacrifices in the community of emigrants in Damascus.

For the emigrants were commanded by our author not to marry their nieces and not to take another wife while the first, after being divorced, was still alive. These two prohibitions, it is true, could not be proved as parts of early Samaritan law; but the first is reported as having been observed by the Samaritans in the middle ages. In addition to this, the Zadokite fragment prohibits conjugal intercourse in the city of the sanctuary.⁹¹ Neither the Torah, nor rabbinic law knows of such a prohibition;

⁸⁸ In p. Abodah Zarah 5, 44d, 54 the Samaritans of Cæsarea ask R. Abahu (between 280-300) why the Jews prohibited their food. When R. Abahu died (p. Abodah Zarah, 3, 42c, 22) in Cæsarea, the Samaritans rejoiced.

⁸⁹ Montgomery, *The Samaritans*, p. 148: The reference to the districts of Apharema, Lydda, and Ramathem as belonging to Samaria in I Maccab. 11, 34 has nothing to do with Samaritans; it deals with administrative districts.

⁹⁰ p. 12, 1: לשמא את עיר המקדש בעיר המקדש עם אשה אל ישכב איש בנדה.

and not even the highpriest was in any way restrained,⁸¹ save in case he had to officiate next day in accordance with Lev. 15, 16. The privileges of Jerusalem referring to the strict levitical purity of the Temple city,⁸² do not include the prohibition mentioned. That the Sadducee highpriests were in this respect stricter, is nowhere indicated; the reverse follows from the incident with the highpriest Matthiah b. Theophilos.⁸³ Our fragment, consequently, represents also in this a sectarian view. Its source seems to have been the undefined wording in Lev. 15, 16 **אֲשֶׁר תִּצַּח מִמֶּנּוּ שִׁכְבַּת זֶרַע** which, identified or compared with Deut. 23, 11, could be interpreted to mean that every kind of issue defiled the Temple. Though I know nothing about the respective law of the Samaritans, the references of Kirkisani and Judah Hadassi to their strict observance of levitical purity justify the suggestion that the prohibition quoted may have been Samaritan or belonged to a similar unknown sect.

For the assumption that priests of Jerusalem in the first century before the current era should have founded an altar or a whole temple for bringing sacrifices in Damascus is not less difficult. Apart from the consideration of its unlawful nature which could now, after the discovery of the Egyptian Aramaic papyri, be minimized,⁸⁴ the sources dealing with religious life in Damascus are clearly against the existence of a temple with sacrifices in that city. Josephus (*Wars* II, 20, 2) reports that there lived in that city ten thousand or eighteen thousand (VII, 8, 7) Jews, and that most of the non-Jewish women observed the Jewish laws. What is meant by this, he describes (*C. Apion.* II, 39) as follows: "There is no city either of the Greeks or of Barbarians or anywhere, nor a people to which the celebration of the Sabbath, as we have it, has not come, and where the fast and the lighting of candles and many of our dietary laws are not

⁸¹ Josephus, *Antiq.* XVII, 6, 4; Tos. Yoma 1, 4; b. 12b, p. 2, 38d; comp. Yoma 6a; Tos. 1, 1, R. Judah b. Bethera.

⁸² Tos. Negaim 6, 2; Baba kam. 82b; Abot R. Nathan, XXXV, 52b; 2nd version, XXXIX, 54a; *REJ.*, 1911, LXII, 201, 1912, LXII, 30.

⁸³ Josephus, *Antiq.* XVII, 6, 4.

⁸⁴ They could have referred to Zechar. 9, 1 **בְּיָמָיו חֲדָרְךָ יִי בְּאֶרֶץ חֲדָרְךָ** מִשָּׂא דְכֹר יִי בְּאֶרֶץ חֲדָרְךָ **וְדִמְשֶׁק מִנוּחָתוֹ**.

observed." Sacrifices of Jews are not referred to; and though an *argumentum e silentio* is not conclusive, it is certain that Jews in Damascus had no sanctuary, nor an altar for sacrifices before the year 70. Of course, it could be assumed that a small sect would not have been noticed in the great community of Jews not sacrificing; yet a temple with an altar would not have escaped the attention of Josephus. Apart from this, the laws prescribed for the founders of the temple reflect a community which has, as far as I know, no parallel in Roman times, and an organization of a Jewish colony which appears unique. They lived in the land of Damascus (I. 19. 5) among non-Jews (9, 1; 1, 2, 3; 12, 6-11; 14, 5), inhabited several cities termed cities of Israel (12, 19; 11, 5), but also in several other places called מַחֲנֹת (7, 6 = 19, 2; 13, 20; 14, 3. 9; 10, 24; 13, 7. 13. 13) which seem to be smaller settlements, perhaps villages. Most of them lived in cities; for he says (7, 9): "And if they settle in camps in accordance with the usage of the land.⁹⁵ and take wives and beget children, they shall walk according to the Law." They owned fields (10, 20; 9, 9; 11, 5), slaves (11, 12; 12, 10), male and female, and cattle (12, 8; 11, 5. 13), and fowls (12, 8. 9); they hired men for work (11, 12), also non-Jews (11, 2), and nurses for children (11, 11). Some of the slaves entered the covenant of Abraham and were not to be sold to non-Jews (12, 10); the fields yielded corn and wine (and oil) (12, 9, 10) which also were not to be sold to non-Jews. The special warning that they should not defile themselves with creeping animals, honey, and animals living in water, and that fish and locusts require special treatment, clearly indicates that the settlements were in places where such animals were to be found and were used as food. No doubt, the members of movable camps in the first instance lived in this way, reminding us of Arab Bedouins.

SETTLEMENTS AROUND DAMASCUS

So far the colonies in and around Damascus, though unknown as to their existence and their mode of life, offer no great dif-

⁹⁵ The parallel in the other fragment p. 19, 3 יָשְׁבוּ כְּחֻקֵּי וְאֵם מַחֲנֹת, assigns the camps in the country to the past. As מִקְרָם הָאָרֶץ אֲשֶׁר הִיּוּ מִקְרָם, there must always have been villages, the word must then mean camps.

ficulty. But when we read that desecrators of the Sabbath and of the holy days shall not be killed but excluded from the congregation (12, 2-6), and in another case (9, 16) that death is the punishment, and one witness shall not be sufficient for a sentence to death (12, 1), it appears rather strange that they exercised the far reaching power over life and death even of their own members. Though the Romans may have granted to the city of Damascus a high degree of autonomy, a small body of Jews would certainly not have obtained such legal independence. Not even Schürer who tried his utmost to prove that Jews in the Roman provinces had their own courts and exercised the right of autonomous justice even in criminal cases,⁹⁶ can adduce an instance of capital punishment. If it is the justice of the head of a clan in its camp, there is no difficulty to understand it; but it is just this loose organization which it is difficult to realize in the case of Jews who are alleged to have left Jerusalem in the first century before, or of, the current era and should have turned into wandering Bedouins. Further we read (12, 6): "None shall stretch out his hand to shed the blood of any man from among the Gentiles for the sake of wealth and gain. Nor shall he take anything of their property in order that they blaspheme not, unless by the counsel of the congregation (חֲבִיר) of Israel." Let anyone on these rules form an opinion of the character of Jews; were they not a tribe exactly like the Arabs living in the desert of Arabia, and did they not fight a neighboring non-Jewish tribe, killing or trying to kill a member of the latter or to rob their property? What does the permission of the whole body of Israel, meaning naturally the colonies, mean? Was it the united council of all tribes that had to give permission to take revenge on the neighboring tribe for bloodshed or theft? Read the picture which Grätz⁹⁷ draws of the Jewish tribes in Arabia shortly before Mohammed, and you will be struck by the naturally close parallels with the passage quoted. But in the first century nothing is known of the existence of such tribes, especially around Damascus.

Now, the settlers in the cities, and among those in Damascus, were of the same origin as those in the camps, and observed the

⁹⁶ *Geschichte des jüd. Volkes*, III, 4th edition, p. 114. 120.

⁹⁷ *Geschichte*, V, 4th edition, p. 76 ff.

same laws. They formed a community קהל (12, 6), had elders (9, 4) and a common temple in one of the cities (12, 1); in all cities the laws concerning clean and unclean animals and levitical purity were observed (12, 19. 20; 11, 19. 20, 22) of which those concerning the defilement of a human dead body are specified in two rules (12, 15-18. 7, 3. 4.), holy and common things were distinguished (12, 20), as in Palestine holy heave-offerings were separated (6, 20; 14, 4), for they had priests (9, 13. 15. 13, 2; 14, 3. 5. 6), learned and ignorant (13, 2.3), and Levites who were learned (13, 3). Debts that had no claimants, and lost things recovered that were not claimed, were handed to the priests (9, 13-1 16). The special warning against vows for the altar and against the acceptance of offerings of various kinds by the priests (16, 13-17), indicates the great influence of the priests over the colonists, and their piety and fear. The priests and Levites were represented on every court consisting of ten⁸⁸ members by four (10, 5), and some of the punishments which the courts inflicted, were of a curious levitical character, and have no parallel in Palestinian Jewish literature. "If a man acts sinfully against anything in the Torah and his fellow-man, only one sees it: if it be a matter of death, he shall make it known in his presence to the מבקר in giving evidence before the מבקר; and the מבקר shall write it down with his hand. When he does it again before one and this also informs of it the מבקר, and if he will be caught again before one, his sentence shall be complete. And if they are two and they witness against him another matter, the man shall be only excluded from the purification, if they are trustworthy; and the man shall inform of it the מבקר on the day when he has seen it." For complete evidence⁸⁹ two trustworthy witnesses are required, but for separating from the purification one is sufficient. "And there shall rise no witness before the judges to kill at his mouth whose days are not full to pass among them that are numbered, and who fears not God. No man shall be believed as a witness against his fellowman who transgresses a word of the

⁸⁸ Courts of ten members we find in Sanhedrin 7b where R. Joshua b. Levi says עשרה שיושבין בדין קולר תלוי בצואר כולן, and R. Huna called ten scholars when he had to judge.

⁸⁹ I read in 9, 22 ההוכח = evidence, as in 9, 3.

commandment with a high hand, unless he has repented." Our sources do not enable us to trace the origin of the rules concerning the evidence of one witness; we know nothing about an exclusion from the purification. As far as we know, no Jew could be excluded from the prescribed purifications after a defilement, as it was in the interest of the community to have his impurity removed. On the other hand, the question is raised in the Talmud¹⁰⁰ whether the peace-offering of an excommunicated person may be sacrificed, though he was allowed to visit the Temple in Jerusalem.¹⁰¹ By refusing purification the colonists excluded the sinner from entering the sanctuary, perhaps even the city of the Temple. Consistently with this "a man who will err to profane the Sabbath and the Feasts, shall not be put to death; but it is upon the sons of man to watch him; if he will be healed of it, they shall watch him for seven years and then he shall come into the congregation" (12, 3-6); he is excluded from the whole community.¹⁰² It is noteworthy that in none of the cases in which the author pronounces death as punishment is the kind of death defined, whereas, according to the scholion of the *Megillat Ta'anit* to the 14th of Tammuz, the criminal code of the Sadducees in each case clearly stated whether it was stoning or another death. There was no section in Palestinian Judaism that, as far as we know, ever had a מִבְקֵר at its head or had even similar laws concerning the character and the evidence of witnesses. Those rules seem to belong to a non-Palestinian country and people, and it is not too far to suggest that they originated in the land of Damascus where the colony had settled; and it is not accidental that similar details can be found in the *Didascalía*,¹⁰³ a law-book of the Jewish Christians in Syria, which gives the *Episcopus* a position similar to that of the מִבְקֵר and excludes sinners from the church on the evidence of single witnesses. It is however the law

¹⁰⁰ Moed kaṭan 15b.

¹⁰¹ Middot 2, 2.

¹⁰² In 12, 2 we read: Any man over whom the spirits of Belial will have dominion and he will speak rebellion, he shall be judged according to the law of the אֹיֵב וְיִדְעֹנִי. The punishment is death, as also the following line shows; the sin is inciting people to idolatry, just as in the case of the sorcerers.

¹⁰³ See Kohler in *American Journal of Theology*, 1911, 416 ff.

of Syria and not Christianity that accounts for the presence of similar details in the two books.

A specimen of a very strange interpretation of Num. 30 is offered on p. 16 which, it seems to me, has been misunderstood. In 16, 1 the author says: "Therefore the man shall impose upon himself to return to the Torah of Moses, for therein is clearly explained.¹⁰⁴ And on the day when the man will impose upon himself to return to the Torah of Moses, the angel Mastemah will depart from behind him, if he will fulfil his words." The self-imposition is a vow, and that it must be kept, the author derives from Deut. 23, 24 which he interprets as follows (16, 7): "Every oath of binding oneself which a man imposes upon himself to fulfil a commandment in the Torah, must not be annulled even if it cost his life." He clearly translates שְׁבוּעַת אִסֵּר in Num. 30, 3. 14 as an oath of that kind, for he goes on: "Everything that a man imposes upon himself (to transgress), he must not fulfil it, even if it cost his life. And every oath of a woman about which [the Torah] said to her husband¹⁰⁵ to disallow her oath, no man shall disallow an oath of which he does not know whether it is to be confirmed or to be disallowed. If the oath is to transgress the covenant, he shall disallow it and he shall not confirm it. The same rule applies to her father." If it were possible to find a representative of this interpretation of Num. 30, the school could be defined to which our author belonged. But there is no trace in the whole passage of the slightest opposition to the rabbinic law about the dissolution of vows; for the rabbis taught exactly the same about a vow to fulfil a commandment and about one to break the law; no dissolution applied to such. Similarly, parallels can be adduced to the list of prohibitions against vows of property¹⁰⁶ to the altar and to the priests; the vow is termed a sin by the rabbis,¹⁰⁷ and our author fines the vowing man (16, 17. 18).

¹⁰⁴ עַל בֶּן יָקוֹם הָאִישׁ עַל נִפְשׁוֹ לָשׁוּב אֶל תּוֹרַת מֹשֶׁה כִּי בָּהּ הֵכֵל מְדוּקָדָּק; instead of נִפְשׁוֹ read נִפְשׁוֹ, see 15, 12 and 16, 4.

¹⁰⁵ Read אִשָּׁה אִמְרָה לְאִישָׁהּ, for the contrast in 16, 12 לְאִבֶּיהָ requires a reference to the husband.

¹⁰⁶ In 16, 14 מֵאִכָּל seems to be a mistake for כָּל and another word.

¹⁰⁷ Nedarim 22a, R. Nathan.

Of some interest is also the paragraph on the oath (p. 15, 1-9). The author not only prohibits the use of the most sacred name of God, the Tetragrammaton, in taking an oath, as the Samaritans¹⁰⁸ and the Dositheans;¹⁰⁹ he goes even further and excludes also אֱלֹהִים and אֲדֹנִי, and allows in the oath only the curses of the covenant,¹¹⁰ but without mentioning the Torah of Moses. If one has sworn by the prohibited name, he has profaned the name of God; and if he has sworn by the curses of the covenant a false oath (Lev. 5, 22, 23), he must confess and return the object of guilt, otherwise he will die. Again we see here the interpretation of a word in a law of the Pentateuch, defining the exact form of an oath. What made the author exclude all names of God, whether his scrupulous respect for them or the too light use of the serious names by his followers, is not indicated in the book. But there is in these rules no trace of Samaritans or Dositheans or Essenes, nor can here anything be detected that would suggest pre-Christian times. The description of the names of God by their first letters is taken from the Mishnah Shebu'ot 4, 13 and the corresponding Baraitas which all belong to the middle of the second century. Our author may have merely acted in extreme opposition to those and similar sectarians who according to Kirkisani held that he who does not pronounce the Tetragrammaton as it is written, but as אֲדֹנִי, is guilty of unbelief.¹¹¹

To sum up, none of the halakic points considered, not even the references to a Temple, an altar, and sacrifice in the district of Damascus shake the accumulated evidence derived from the interpretation of the more distinct legal rules and laws and their history that the Zadokite fragment was the law-book of a tribe that lived in the neighborhood of Damascus about the seventh or eighth century. As the fragment in its first part gives also the

¹⁰⁸ p. Sanhedrin, 10, 1, 28b, 4 and Geiger, *Nachgelass. Schriften*, III, 261.

¹⁰⁹ Abulfath says that the Dositheans taught that the Tetragrammaton must not be pronounced, but אֱלֹהִים should be read.

¹¹⁰ Perhaps he derived it from Lev. 5, 1 אֱלֹהִים קוֹל אֱלֹהִים where the oath is termed אֱלֹהִים = curse; cf. Judges 17, 1; I Kings 8, 31.

¹¹¹ 319, 3 about some non-Karaites in Khorazan. In Abodah Zarah 18a, top it is reported that R. Hanina b. Teradion (before 135) pronounced the name of God according to its letters.

origin of the sect, it will now be necessary to leave the Halakah and to consider the style of the writer and the details of the historical account. As the whole document presents itself as composed at the time of the events with which it deals, of the foundation and organization of the settlement, we shall by the ascertainment of the probable time of the composition directly obtain the period of the unique incidents which form the subject of the book.

LANGUAGE OF THE BOOK

"The language of the manuscript—says Professor Schechter (p. XI)—is for the most part pure Biblical Hebrew, the first three pages rise even to the dignity of Scriptural poetry. But there are in it terms and expressions which occur only in the Mishna or even only in the Rabbinic literature dating from the first centuries of the Middle Ages. It is, however, not impossible that all such expressions pointing to a later date are mere substitutions by the later scribe for the original terms." How precarious it is to remove a strong proof by attributing such substitutions to the scribe, it is hardly necessary to emphasize; the expressions are there, and must tell their evidence. The most striking feature of the language, however, is the continuous employment of whole phrases and sentences of the Bible the like of which we find in none of the literary productions of the pre-Christian, pre-Talmudic, and Talmudic times (except the Hebrew Ben-Sira which should not be used as evidence owing to its contentious character). It is unnecessary to quote examples from our fragment, as every page offers several. Besides this, the very hard, clumsy, sometimes almost impossible Hebrew in the halakic part which is not merely due to the style of the author, strikes one as late. I shall only cite p. 13, 2 ff.: **ובקום עשרה אל ימש איש כהן מבינן בספר ההגו על פיו ישקו כולם ואם אין הוא בחון בכל אלה ואיש מהלויים בחון באלה ויצא הנורל לצאת ולבוא על פיהו כל באי מחנה**. The translation is not difficult, for we are used to all kinds of Hebrew. But when examining the parts, we find **על פיו ישקו** borrowed from Genes. 41, 40 and used in an unnatural sense; similarly **לצאת ולבוא על פיהו** and **ויצא הנורל**. As to the vocab-

ulary, **ובקום** could be translated: when there will arise ten, though the context does not require it; **ימש** is, it is true, a biblical word, but never used without the place whence one departs. **מבונן** = versed, if passive, reminds one of the rabbinic interpretation of **יבוננהו** in Deut. 32, 10,¹¹² as the active form in 13, 5. 8 taken from Chronicles means "teach." **בחון** = expert, where is it found again? **נהיות** (13, 6) has been discussed above (p. 453) as unusual; **עולם** (13, 8) = events of ancient times, because he found the verb in the Nif'al; **כפי יהותו** (12) "according to his position." Are such formations of nouns probable in the first century, and has anybody written such Hebrew? Perhaps, if a specimen of Samaritan Hebrew of that time were available, such forms could be stated; but not **יהות** which we would expect only in a translation of Arab philosophical writers. Or take a sentence like (11, 10) **אל יטול בבית מושבת סלע ועפר**; whatever **מושבת** means, a dwelling house or a closet,¹¹³ the line prohibits to take up a stone or a clod of earth. But does **סלע** mean a stone,¹¹⁴ as it must mean next to **עפר**? Either the author's knowledge of Hebrew was poor which is contradicted by his style in other parts of his book, or he thought in a language in which the word for rock also meant a small stone. In 20, 3. 6 **בהופע מעשיו** when his actions will be revealed, is not used before the Arab period; **מאמרם** (9, 10) seems to mean: in the presence of the judges or their representative, from the Arabic **ואולתם** (6, 10) means probably: others, as in mediæval Hebrew. In **כל אדם אשר יחרים אדם מאדם** (9, 1) the word **יחרים** has so far not been explained, it may have been, as others in this context,¹¹⁵ a technical term in the author's place, but **אדם מאדם** which Schechter explains as dittography, looks like

¹¹² Sifre, Deut., § 313, p. 134b: **בששרת הרברות, מלמד שהיה** יבוננהו, **הרבנן יוצא מפי הקב"ה והיו ישראל מסתכלים בו ויודעים** ...

¹¹³ Compare **המקורול** in Tos. Shabbat 13, 17, p. 8, 11c, 4; **באבנים מקורולות דחזין לבית הכסא**, in b. Shabbat 43a: **אבנים מקורולות**; **תנו רבנן שלש אבנים מקורולות מותר להכניס לבית הכסא** 81a:

¹¹⁴ As **סלע הבא בידים** in R. Judah's statement in Baba batra 19a, in a Baraita. Little stones = spots in Genes. r. 20, 4 and parall.

¹¹⁵ **בהוכיח למבקר** (9, 3), **אשר לא בהוכח** (9, 3), **יביא על רעהו דבר** (9, 18), **מורעיל** (10, 11. 13).

an Arabism. בית השתחות (II, 22) which follows after a rule about sacrifices and stands before a rule about blowing the trumpets of the congregation, must mean, as also the sentence itself shows, a place of worship.¹¹⁶ If it is not a coincidence, it is the Arabic word for the house of prayer which the Falasha parallel quoted by Schechter does not refute. And in the difficult line referred to (II, 22) ובהרע חצוצרות הקהל יתקדם, או יתאחר ולא ישביתו את העבודה כולה¹¹⁷, the Arabism for: may it be earlier or later, is too clear to be considered accidental. And the unusual formulae introducing quotations from the Bible, כאשר, אמר, כאשר כתוב, ואשר אמר, אשר אמר, which have no parallels in rabbinic literature, are extant in Arabic.¹¹⁸ If these observations are not entirely without foundation, the book cannot have been written before the Arabs conquered the district of Damascus; or the Jewish settlers had been influenced by the various tribes of the ancient Ghassanide race whose kings had ruled in the districts around Damascus before the Arab conquest.¹¹⁹

¹¹⁶ It is noteworthy that our author prescribes levitical purity of some degree for entering the house of prayer which is not the Temple. This agrees with Anan's rule that a priest must not drink wine when about to enter the court of the tent of meeting (Harkavy, *Anan*, p. 21), and that the same applied to the synagogue. Further (p. 35) he prescribes the same purification for the synagogue as for the court of the tent of meeting.

¹¹⁷ The meaning of the whole sentence is obscure; does this line revert to the Sabbath laws as חצוצרות הקהל suggests? For Num. 10, 7 prescribes the blowing of the trumpets for calling the congregation together; and Mishnah Hulin 1, 7, end, Sukkah 5, 5; Shabbat 35b tell us that just as in Jerusalem (Josephus, *Wars* IV, 9, 12), so elsewhere in Palestine and Babylonia the approach and the beginning of the Sabbath was announced by blowing the Shofar. Only the members of the covenant, strictly adhering to the words of the law, used trumpets. Whether the trumpets sounded earlier or later, the priests shall not stop the service (in the Temple), for it is a holy service (I supply in the lacuna עבדת, not שבח). It is possible that ולא is a mistake and in that case the rule should say: when the trumpets sound, everybody must stop work, for it is holy Sabbath.

¹¹⁸ How else is to be explained 3, 21 כאשר הקים אל להם ביר יחזקאל, as God promised them?

¹¹⁹ Guy Le Strange, *Palestine under the Moslems*, p. 33.

THE HISTORICAL PART

In approaching the historical portion, I am quite aware of the difficulties that beset the way to the true interpretation; all the more so as the discoverer and editor of the fragment, just as the numerous reviewers of his learned book, some of recognized authority as E. Adler, Bacher, Chajes, Kohler, I. Lévi, Margoliouth, and Poznański, derived the authenticity of the contents as not to be contested and their pre-Christian origin from the historical part of our book, and only few of them as Adler and Bacher advanced doubts against its early origin. A closer examination of the whole story, however, reveals many difficulties against the theories proposed. For in spite of the most careful reading of the book and its commentary, I failed in detecting one certain indication of its early origin. The fragment opens with an impressive address to the knowers of justice, and announces God's judgment to the despisers of God. The author refers to the destruction of Israel and of its sanctuary, and to the preservation of a remnant; and he reports that 390 years after the delivery of the people into the hand of Nebuchadnezzar, at the termination of the wrath, God made the root of a plantation grow from Israel and Aaron to conquer his land and—in obscure phrases borrowed from the Bible—to enjoy the goodness of his land. If the figure were chronologically exact and not taken either from Ezek. 4, 5 or guessed, it could take us to the year 196 B. C., the times of Sirach. But neither our scanty knowledge of that period, nor the author's verbose poetry helps us to understand his statement; but so much we know as to see that his figure is wrong. As to conquering or taking possession of land in Palestine, we learn sufficient from Josephus and the two books of Maccabees: there was no opportunity for the subjects of the Ptolemies or the Seleucidae in Palestine to extend their boundaries before the year 153-2 under Jonathan the Maccabee, that is 413 years after Nebuchadnezzar's conquest of Judea. This figure would only be wrong 123 years for which the uncertain Jewish chronology of the Persian period could easily account. The Maccabees were a new root of a dynasty; but as they were of Judea the author would have used Israel to denote Judea, as in lines 3. 5, which is, though Ezekiel

constantly does the same, not quite smooth. It could also refer to the conquest of the Samaritans and of Samaria and of the Idumeans by John Hyrcanus between 129-125, or of Galilee by Aristobulus I about 104, which was the 482nd year since Nebuchadnezzar. Proceeding with his history, the author reports that Israel became conscious of its sins and groped in the dark for 20 years; this figure, if not apocalyptic, could, according to the first suggestion, refer to Simon the Maccabee and the first year of the reign of John Hyrcanus. Then seeing the true repentance of the people, God gave them a righteous teacher to lead them in the right way. Then He revealed to later generations the punishment to be inflicted¹²⁰ on the band of treacherous men.

Of course, the time of aberration, just as the punishment following on it, was past history to the author, and both constitute a great part of his preaching. A man of scoffing arose who preached untrue things and led Israel astray; a whole list of his and his follower's sins is given (1, 15-21) which will be considered later on. If the scoffer is, as Mr. E. Adler and Dr. Kohler suggest, Simon b. Shetaḥ and the Pharisee ascendancy under queen Alexandra (76-67), the punishment revealed to John Hyrcanus would be the conquest of Jerusalem by Pompey (63). But this is impossible, for the Sadducee nobility suffered much more than the Pharisees, as not only Josephus, but also the Psalms of Solomon prove. As he assigns the punishment to a later or to the last generation (1, 12), it seems probable to refer it to the destruction of Jerusalem by the Romans (70 C. E.). Here the first paragraph ends in which the author asked his followers, the knowers of righteousness, to consider God's doings; he shows that all sinners in the past were punished, in early as well as in later Israel.

In the second paragraph (2, 2-13) he addresses himself to the members of a covenant who evidently are identical with the knowers of righteousness. He points out to them the ways of wicked men who turned away from the right way and detested the law, and were punished by utter destruction. He emphasizes that they had never been chosen by God, for He knew beforehand

¹²⁰ עשה instead of יעשה in 1, 12.

their future actions; He rejected their descendants and turned away from the land, till they perished, as their end had been appointed by God.¹²¹ From all He raised a few good ones in order to preserve a remnant for the land and to fill the world with their seed; He informed them through His anointed one of His holy spirit, while He led astray those whom He hated. Accordingly the ways of the wicked (2, 2) mean their treatment by God; the sinners were considered as originally chosen by God, and the author has to prove that their destruction was justified. Nor did this prove anything against God's prescience, for all had been arranged before they were created. In the third paragraph (2, 14 ff.) the author reverts to the actions of God which his hearers should understand, so that they could choose the right action and reject the wrong one and not go astray through sinful thoughts and immoral eyes. Many in the past erred, as for instance the angels and their sons the giants who were afterwards swept away by the flood for their sins; also the sons of Noah and their descendants, and the sons of Jacob erred who were punished for it, but Abraham, Isaac, and Jacob observed God's commandments and were entered friends and men of God's covenant forever. Their descendants in Egypt acted against God's commandments and ate blood for which sins they died in the wilderness. In Kadesh they disobeyed and murmured, and God punished them; and also their descendants perished for the same sin, their kings, their mighty men, and their land were destroyed, the first members of the covenant sinned and were handed over to the sword. But through those who held fast to His commandments and were preserved, God made an eternal covenant with Israel and revealed them His laws; He led them and they dug a well of much water. Those, however, who rejected those laws and continued living in two old sins (3, 17), will not live, while to the obedient God forgave their sins and built for them a lasting house in Israel the like of which there never was before. Those who hold fast to God will live forever and attain every human glory (3, 20).

¹²¹ p. 2, 9. 10 is very difficult language. וידע would give better sense as a pluperfect Hifil: God had many years ago revealed the years of the future existence of the wicked; ספּר ופרש, as we shall see, are synonyms, the first is a noun to ספּר = story: God had revealed the story of their end to all creatures.

In reading these glowing sentences the reader is all the time under the impression that the well was dug and the glory attained in the land of the preceding events, Palestine. But suddenly an interpretation of Ezek. 44, 15 (3, 21 ff.) tells us that those repentant men left the land of Judea with others joining them; and also the well was dug by the emigrants in the land of Damascus (6, 3 ff.). He terms them שְׂבִי יִשְׂרָאֵל (4, 3, cf. 19, 16), they were, consequently, up to now sinners whose sins God had first to forgive (3, 18);¹²² they are priests and laymen (8, 2), and the well is the Torah in its new interpretation (6, 4, 9). Besides these, others accepted their teaching who, however, seem to have remained in their original place, as the context in the continued interpretation of Ezekiel 44, 15 indicates (4, 3).¹²³ "the sons of Šadoḳ." these are the chosen of Israel, renowned by names, whose sins God forgave (4, 6); and others who follow them in acting in accordance with the interpretation of the Torah, will also be forgiven their sins (4, 10). And when the appointed number of years shall have passed, they will not join again the house of Judea, but all shall remain in their positions. As the continuation of the verse¹²⁴ suggests, they guard their sanctity, their purity of life, after their sins were forgiven (4, 6), and they act justly. According to 6, 11¹²⁵ they have been made to promise not to enter the sanctuary to light the fire on the altar, and to bring about the closing of the door, if the people there (not mentioned) should continue their sins and not act according to the interpretation of the Torah. "They shall separate from property of wickedness

¹²² When explaining to the members of the covenant the punishment of the wicked (2, 2 ff.), he points out that God is longsuffering and full of forgiveness לְכַפֵּר בְּעֵד שְׂבִי פֶשַׁע, towards the repentant, but full of wrath to punish those who persist in their sins. The first group consists of the members of the new covenant, the sinners are those who rejected the new laws, as in 3, 12-20.

¹²³ As הַכֹּהֲנִים is explained to mean those who left Judea, and those who joined them, all sections of the emigrants are hereby exhausted; now follows בְּנֵי צִדּוֹק which must refer to non-emigrants.

¹²⁴ אֲשֶׁר שָׁמְרוּ אֶת מִשְׁמֶרֶת מִקְדָּשִׁי.

¹²⁵ From the context and the new address in 6, 20 to the members of the new covenant in the land of Damascus it is clear that the preceding paragraph 6, 11 refers to the members in their native country.

defiled by a vow and ban, and from the property of the sanctuary and from robbing the poor of the nation so that the widows are their prey and they murder the fatherless; and they shall distinguish between clean and unclean and make known between the holy and the profane and observe the Sabbath according to its interpretation and the feasts and the day of fast according to its command."

THE SINNERS IN JERUSALEM AND DAMASCUS

As several improbable explanations have been suggested of this list of sins, a few words of interpretation may be given here. First, property of the sanctuary could only be handled by priests, laymen had nothing to do with such, so that the denunciation could only have concerned priests. Secondly, property arising from ban, as far as biblical and rabbinic law informs us, could only belong to the Temple or to the priests, so that also this detail can only refer to priests. Vows mentioned together with ban can only mean goods vowed to the Temple, and such were administered by priests; consequently the appropriation of vowed goods cannot have been committed but by priests. Now 4, 12 tells us that while the emigrants lived in the land of Damascus and other members of the same covenant practised their virtues at home, a wicked man will be let loose upon Israel and teach them three sins: immorality, (sin against) property, and defilement of the Sanctuary, three wicked snares concerning which Levi the son of Jacob has spoken. Professor Schechter rightly points to the Testament of Levi, ch. 14, where the misappropriation of holy property is prophesied of the descendants of Levi. This is confirmed by the continuation in our fragment (6, 17) concerning the distinction between impure and pure, and holy and profane which was the exclusive privilege of priests (Lev. 10, 10; Ezek. 44, 23). If this is correct, then those to whom "the man of scoffing" preached wrong ideas (1, 14-21), were in the first instance priests. Unfortunately the list of sins is too general to allow a test,¹²⁶ but Testa-

¹²⁶ In 1, 16 one of the sins is the removal of the boundary set by the ancestors, which probably means the abolition of old customs and laws. In 5, 20 it is said that at the end of the destruction of the land there arose those who removed the boundary and led Israel astray, for they spoke re-

ment of Levi 16, 2 has the same: "And ye shall persecute righteous men,"¹²⁷ and hate the godly; the words of the faithful shall ye abhor." And similarly the members of the covenant who promised not to enter the sanctuary and light the fire on the altar, were priests, and they were expected to force by their resistance the main body of the priests to adopt in their dealings with the sanctuary the law of the dissenters. It must be added here that, at the destruction of the land, also backsliders were killed (8, 1), members of the covenant who had given up the observance of the commandments. This is made certain by the parallel in 20, 1 ff. in the second fragment. Here the emigrants are termed members of the new covenant in the land of Damascus (20, 12), and their backsliders are also discussed (20, 8-12); different from both are those who had entered the community of the men of holy perfection (20, 2. 5. 7; 7, 5), but ceased to practise the commandments of the righteous. Any such man will be dismissed, when his actions become known, from the community of the disciples of God. And if his actions are against the interpretations of the Torah in which the men of holy perfection walk, he is excommunicated. As to the backsliders in 8, 1 ff., it is not clear whether those in Judea or in the land of Damascus are meant;¹²⁸ but it is evident that he is blaming Judah, on account of **בוני החיץ** (8, 12 = 19, 24) who pay no heed to the coming punishment and do not see that a preacher of untruth preaches to them with

bellion against the laws of God given by Moses and against His holy anointed one.

¹²⁷ According to 1, 19 they must have been judges. It is hardly necessary to add that just as little as **ויגודו על נפש צדיק**, so **וירשיעו צדיק** means that they treated unjustly an individual.

¹²⁸ While **באי בריתו** speaks for Damascus, the verse adduced from Hosea 5, 10 about the princes of Judah, the list of sins containing immorality, misappropriation, and others, and the preacher of untruth show that the members of the covenant in Judah are referred to. The other fragment 19, 16 = 8, 3 has the addition **כאוי בברית תשובה** they had entered the covenant of repentance, but continued the sinful life. One of their sins is **ולא נזרו** = they did not separate from the people (8, 8) and its sins (19, 20), while the **שבי ישראל** departed from the way of the people (19, 29; 8, 16); the majority of the people who did not practise the laws of the covenant, were in his eyes all sinners.

whose community God is angry (8, 18-19, 31). They follow the ways of the kings of the nations (8, 11. 12, 19, 23), and the head of the king of Javan will come to execute punishment on the sinners.¹²⁹ This time is more generally termed the time of visitation (7, 9 = 19, 5) in which the observant will escape while the others will be destroyed by the sword.

The backsliders among the emigrants in the land of Damascus are threatened with even heavier punishment for having departed from the well of living water (19, 34); they will not be included henceforth, from the death of the unique teacher till the appearance of the Messiah from Aaron and Israel (20, 1), in the lists of the people. They and their families will have no portion in the house of the Torah (20, 10. 13) and will be punished as the treacherous in Judea (20, 10). Those members of the covenant who have broken through the bound of the law, will, when God appears to Israel, be destroyed from the camp, and along with them those who sinned in Judea in the days of purification (20, 25-27). Those, however, who hold fast to the laws and obey the teacher and confess their sins,¹³⁰ will not rebel against God's commandments, but will accept the teachings of the first teacher. It is very probable that the book was composed, when, soon after the foundation of the sect, several members ceased practising the special laws of the covenant and others entirely abandoned the cause. The death of the energetic first teacher may have contributed to the discouragement of the sect; and our author expected that, on the one hand, by referring his fellows to the speedy coming of the Messiah, and, on the other hand, by picturing the

¹²⁹ In 20, 10 they are described as men who returned with the men of scoffing; in 20, 26 **בְּרִשְׁתֵּי יְהוּדָה**. The first teacher of the new law in Judea is called **בְּרִשְׁתֵּי** (2, 12), who teaches the remnant God's holy spirit. As also 20, 1 ff., deals with the beginning of the movement and incidentally mentions the death of the unique teacher, it seems that he is identical with the **בְּרִשְׁתֵּי**. He died at the beginning of the new movement, and from his death the era of the followers is counted (20, 1. 14); forty years will pass till the faithless members who joined the preacher of untruth, will have died out (20, 14).

¹³⁰ The special purpose of the confession is the admission that the fathers have sinned by not obeying the laws which constitute now the covenant, and by recognizing that the punishment was justified.

punishments of the faithless in Judea and in the land of Damascus, he would succeed in strengthening the wavering and frightening the treacherous. The task and the duties imposed upon the members must have weighed heavily on them, and partly account for defections from the sect. They were commanded to give tithes, evidently to the many priests of the community (6, 20); the word "according to their explanations" seems even to indicate that those contributions went beyond those expressly commanded in the Torah. When the members emigrated from their native country, they had to leave behind their property and the income derived from it; only few may have brought money with them and bought the fields referred to in the book. Consequently, there were many poor in the camps depending on the support of their neighbors; in addition to them there were proselytes¹²¹ some of whom may have joined the sect in the hope of support. The duty to love one's brother and to support the poor, the needy, and the proselyte (6, 20, 21) had, therefore, especially to be mentioned.¹²² The observance of the laws of purity was not easy, though many of the members were priests (7. 3). The special reference to the vice of revenging oneself and bearing grudge (9, 2. 4, 6-7, 2. 3) suggests that there was not much love to cement the adherents of the sect together, and this may also have contributed to force some to leave the camp.

AUTHENTICITY OF THE BOOK

Professor Schechter takes it for granted that not only the central event of the fragment, the emigration and the settlement of Palestinian priests in the land of Damascus, is to be accepted as true, but also the details of the report referring to relations between two sections of priests in Jerusalem and the activity of a violent leader of the ruling party. And also the time of the

¹²¹ p. 14, 5 priests, Levites, Israelites, and proselytes.

¹²² In 14, 14 ff., we read that the contributions were delivered into the hand of the highest dignitary, the מוכר, and that the judges distributed them among the poor and needy, the old men who had nobody to support them and a maiden that had nobody to care for her (the last reminds one of the Christian charity organization in which the virgins enjoyed a special position), and all for whom nobody provided.

foundation of the sect in the year 176 B. C. is to be taken as exact, so that the kings of Javan would be Antiochus Epiphanes and his supporters. It has not escaped the attention of scholars who discussed the fragment that several generations intervened between the foundation of the sect and the activity of the man of scoffing who forced the members of the new teaching to emigrate (1, 11-20; 4, 12 ff.). The followers of the scoffer were destroyed (2, 1; 20?; 7, 9-14), and this visitation was called the first (7, 21; 8, 1); it has been explained as the conquest of Jerusalem by Pompey.¹³³ But in the continuation of the last named passage the future punishment of the faithless members of the covenant is announced; and in this description it is prophesied that the head of the kings of Javan will come to execute the punishment, and it is expressly stated that the visitation will come for the acceptance of the teaching of the preacher of untruth (8, 1-13). It is the second¹³⁴ and probably last judgment which the author views and which he most probably had already seen. According to this interpretation the writer must have composed his book after the destruction of the second Temple, but may have done so several centuries after the events described by him. As there is no statement in Jewish literature to confirm the report of the fragment, what could be adduced to prove the truth of its contents? Or is the whole book an invented story to prove the early origin of a sect that lived in the district of Damascus in the seventh or eighth century, and to defend its peculiarities as to worship, constitution, and religious law? Could then the list of the sins blamed on the opponents suggest the time and the character of the author?

An unknown preacher in Israel is held responsible for the aberration of the whole population of the city in Judea (1, 14 ff.). What has he done? Seven lines are devoted to the list of his wrong actions; but whether it is due to the poetical vein of the writer or to the fact that his generalities were easily understood by his contemporaries, he does not tell us more than that the followers of the scoffer were unjust and delivered to the sword.

¹³³ Some scholars refer this to the destruction of Jerusalem in the year 70.

¹³⁴ For he speaks of the first visitation.

He is clearer in 4, 12 ff. where he accuses him of immorality, misappropriation, and defilement of the Temple; here he quotes for his indictment the Testament of Levi. Did this book suggest to him the whole attack on the priests, or is it merely a quotation to support it? Though he can reproach the other side only with obeying different marriage laws, immorality is several times mentioned as a charge against the opponents (7, 1 להזיר מן הזונות, 8, 5 = 19, 17 ויתגללו בררכי זונות, 8, 7 = 19, 19 ויגשו לזמה, 2, 16) in the strongest expressions and in generalities exactly as Testam. Levi 9, 9: "Beware of the spirit of fornication, for this shall continue and shall by thy seed pollute the holy place;" and more detailed in 14, 4-8 where the worst forms of lewdness are attributed to priests. Our fragment warns again against immorality and sinful inclination in 2, 16, and his first illustration is the sin of the angels, taken from apocalyptic literature, either from Enoch or the Testaments.¹³⁵ There may be many more passages which he borrowed from the Testaments, to use them as the framework in which to set his detailed attacks. It is not accidental that the Genizah of Cairo contains a fragment of the Testament of Levi, and that this attack on priests is based on that Testament. And that it was the Aramaic form of it which he used for his purposes, is evident from the so far unexplained word סרך frequently used by the author for "order" which occurs twice in the Aramaic fragment of the Testament of Levi.¹³⁶ If we knew when this version of the Testament was made, it would be possible to find a *terminus a quo*. But whenever this may have been done, there is not the slightest difficulty against the assumption that the Aramaic version was in existence in the seventh or eighth century, as the fragment of the Genizah proves its existence in the tenth or eleventh century. For on p. 16 our Zadokite fragment refers to the book of divisions of time according to their jubilees and their week (of years).¹³⁷ Though the reference in its present surround-

¹³⁵ The other passages in Jubilees and Enoch 1 contain none of the details quoted by the fragment.

¹³⁶ *JQR.*, XIX, 574, 4. 6 where the Greek has *τάξις* = order; *American Journal of Theology*, 1911, 417, 41.

¹³⁷ If the whole reference is not by mistake placed here, it probably meant this: the sinner shall make up his mind to return to the law of the

ings is not intelligible, owing to the preceding lines not being preserved, there is no doubt that he meant a Book of Jubilees which could have formed a part of the Testaments.¹³⁸ Now, it is only due to an incidental reference that we know that the schools in Babylon had a Book of Jubilees in the tenth century different from ours and fuller, probably in Hebrew or Aramaic, known also to the Karaite Salman b. Jeruham¹³⁹ in its Hebrew Midrash form. This proves that if our author composed his book, as was shown from some of the halakas and the style, in the eighth century, there were at his disposal the Aramaic Testaments.¹⁴⁰ From these he took his illustration of the disobedience of the Israelites in Egypt (3, 4-6) by their eating blood.¹⁴¹ It seems also fairly clear why he selected just this book for his attacks on his opponents. As he wrote against priests and tried to prove that one section of them was never chosen, but from early times destined for destruction, he looked for an earlier source which gave the reasons for such punishment of priests and the prophecy of their visitations.

Torah, before the time expires which has been fixed for the trial. The length of this term קץ, occurring also in 4, 5 וקץ מעמדם = the length of their existence (see 2, 9), 6, 10 בכל קץ הרשע all the time the wickedness will last, 12, 23 ער עמוד משיח בקץ הרשעה 15, 7; 20, 23 בקץ מעל ישראל during the treason of Israel.

¹³⁸ Charles in *JQR.*, XIX, 567 says: The common source of these Greek and Aramaic texts is a work based partly on the Testaments and partly on the Book of Jubilees or else a work from which the authors of these books drew some of their materials.

¹³⁹ See Epstein, *מקדמוניות היהודים*, part II, מדרש תרשא, p. V-VIII ff.

¹⁴⁰ To p. 8, 20 הוא הדבר אשר אמר ירמיה לברוך בן נריה ואלישע לגחזי נערו. Schechter, p. XVI, says: "In another place we have an allusion to the word which Jeremiah has spoken to Baruch, the son of Neriah, and Elisha to Gehazi his servant, which suggests the existence of Pseudepigraphic works ascribed to these Biblical personages and considered authoritative by the sect." It seems to me that Jerem. 45, 6 is quite sufficient for the statement in 8, 18, 19 and also II Kings 5, 26-27, and there is no need for assuming such Pseudepigrapha.

¹⁴¹ The same applies to his reference to Jannes and Jambres who are known from a quotation of the first century (see Schürer, III, 292); but it does not prove that he could not have known the legend in the eighth century from the Midrash or some other source, just as Jerahmeel (Schechter, p. LIX) knew it.

fact which can be verified by our sources, Josephus and the rabbinic literature, proves that the author had seen anything of the priesthood in Judea and had observed actual life in the times of the Temple. He is ignorant of the circumstances even of the event which constitutes the central fact of his book, the emigration of some priests of Judea to the land of Damascus. He forgot to state or probably did not know who caused the emigration and why and how and when; he only knew the settlement in the land of Damascus, though his description apparently deals with the very men who had left Judea and had founded the colony. If any tradition had been used by him, his facts would have been more substantial. And even though without tradition about the emigration, if he wrote in the first century, he could have exhibited at least some slight knowledge about Jerusalem, its priests, and the service in the Temple the purity of which gave him so much trouble and pain. Our author can never have seen the Temple, nor has he spoken to a priest of that sanctuary, nor has he read any sources dealing with the times of the second Temple, or else he forgot all real information characteristic of an author interested in the main facts of his subject. He must have been separated by a considerable time from the events which he described and, it seems, imagination took the place of facts which he borrowed from the Testaments. He had a few facts supplied by conditions of his own time and place: a sect in the district of Damascus consisting of Aaronites, just as the two Jewish tribes of Arabia, Bnu-Nadhir and Bnu-Kuraiza in the seventh century were of priestly descent and called themselves Alkahinani¹⁴⁴. The sect in Damascus differed in two important points of the marriage law from other Jewish tribes: they lived in monogamy and married no other woman after divorcing the first wife, as long as she was alive, and married no niece. They had a peculiar organization and constitution, and observed some laws of the Torah concerning levitical purity and killing animals for food more strictly than other Jews. In order to prove for

doubt, the noble priests were originally meant. Yet, as far as I know, there is no true parallel in our accounts.

¹⁴⁴ Graetz, *Geschichte*, V, 4th edition, p. 74.

some special purpose unknown¹⁴⁵ that their observance was not merely ancient, but the only correct rule,¹⁴⁶ our author constructed a history of his sect. It was invented to show that the sect had existed already in early times and that the differing practice of the Jews was wrong and followed the teaching of an unworthy, rebellious teacher and of a company that was punished by God.¹⁴⁷

CONSTRUCTION OF HISTORY

We know similar constructions of history in the references of early Karaite writers to an existing Karaite sect in Jerusalem before the destruction of the Temple. An interesting instance is Kirkisani who in Professor Schechter's statement about the character of the Zadokite fragment plays a very important part. He says¹⁴⁸ that Jeroboam was the first sectary, after him came the Samaritans, and only after these, in the times of the second Temple, appeared the Rabbanites who raised themselves to be the heads of the whole nation. Among them Simon the Just was the first who, at the same time, was the last member of the Great Assembly; in fact, however, the Rabbanites only continued Jeroboam's work. Against them rose the Sadducees whose head were Sadoḳ and Boethus. Sadoḳ was the first who exposed the Rabbanites and contradicted them publicly. He revealed a part of the truth and composed books in which he frequently denounced the Rabbanites and criticised them. When reading this history of the religious developments of Judea during the last centuries of the second Temple, we are inclined to assume that Kirkisani found all this in Sadoḳ's books, and that his presentation is worthy of

¹⁴⁵ The fact that he deliberately avoided to mention the name of Jerusalem or of the Jews, seems to suggest that he had a special consideration for Samaritans who, we know, were well represented in Damascus.

¹⁴⁶ It is not improbable that also the sacrifices and the Temple were not in existence, but an invented detail.

¹⁴⁷ He also seems to meet the obvious objection that priests ought not to have left the Temple, by showing that the separation, emigration, and new organization was prophesied by the earliest prophets. Even the new land and its interpreter, the gatherings and the prince were all foretold by them. Perhaps their own members raised such objections.

¹⁴⁸ See Poznański in *REJ.*, XLIV, (1902), 162, from *Kitāb al-Anwār*, II, 1,

serious consideration. But the reference to Šadduḳ and Boethus at once betrays that Kirkisani or his source borrowed this statement from the rabbis, and that his informant knew nothing about the past. This is confirmed by his other reference to Simon the Just which is taken from the first sentence of Mishnah Abot. And after reading with great care Harkavy's evidence and Poznański's confirming arguments about the consciousness of the Karaites of their descent from the Sadducees, it seems to me that also their mere reference to the same Šadduḳ and Boethus as their ancestors clearly showed that it was purely a construction based on Jewish sources. For how did they, otherwise, commit exactly the same mistake about the two eponymous heroes as the rabbis in Abot R. Nathan? It would be a very strange coincidence! Once Kirkisani had adopted it, other Karaite writers followed; and Joseph AlBaşir is an interesting illustration of the construction: "In the times of the second Temple the Rabbanites, then called Pharisees, became the masters, while the Karaites, then known as the Sadducees, were at the bottom." That there was no early source available for this, is evident from the parallel statement of the author of the Differences between Rabbanites and Karaites: "We are much earlier than they (the Talmudists); from us descended the Jerusalemites, the Shammaiites, the Sadducees, and the Boethusians." What he meant was the spiritual relation between the halakic principles of the Shammaiites and those of the Karaites.¹⁴⁹

The tendency of the Zadokite fragment is the same, only its construction of history is more elaborate and clothed in historical events located as to place, and time, persons, and actions; and it owes its origin, as several halakas show, to the time when a number of sects were brought into existence in Asia at the end of the seventh and the first half of the eighth century. Judean and Jewish in its beginnings, the sect depicted came in closer and continuous contact with the Samaritans in Damascus and adopted some of its religious practices and prohibitions which we find in this fragment. If the references to a Temple with sacrifices and an altar reflect actual conditions, the latter were, as has been

¹⁴⁹ Poznański in *REJ.*, XLIV, 175.

pointed out above, founded by Samaritans, especially as it is not said in the fragment that the Judean emigrants instituted them. When the Judeans came to the land of Damascus, they were after some time admitted to the Samaritan Temple on the condition that they observed the strict laws of purity required for the sanctuary by the Samaritans. Perhaps even the awkward style and the unusual words were due to Samaritan influence. But for the present we know too little about Jews and Samaritans in the district of Damascus in the seventh and eighth centuries to attempt to solve all difficulties of the fragment.

Let us be grateful to Professor Schechter for his discovery and for the thoroughness with which he has elucidated many of the most difficult points; and especially for the many-sided commentary and the learned introduction in which he has drawn our attention to the numerous problems awaiting solution. Even if his find should not prove to be an early Zadokite book, but one of the many links in the great religious upheaval of the times immediately preceding the Karaite movement, it has drawn the attention of the literary world to a chapter of Jewish history which has rightly invited the collaboration of many great minds and will long continue in attracting and captivating our best scholars.

London

A. BÜCHLER

ANNOUNCEMENT

I had the opportunity of reading the article of the Reverend Professor Doctor Adolph Büchler, Principal of the Jews' College, London, in proof, and prepared a refutation of it. But the rumor having reached me that M. Israel Levi, of Paris, has discovered new pages of the Zadokite document which he is about to publish in the *Revue des Études juives*, I decided to keep back the publication of my rejoinder until these new discoveries have been made accessible to the public.

S. SCHECHTER